

SB 92 by Negron (CO-INTRODUCERS) Brandes; (Identical to H 0119) Searches and Seizures

836310	A	S	RCS	CJ, Smith	Delete L.28:	01/15 12:20 PM
816222	A	S	RS	CJ, Smith	Delete L.32 - 36:	01/15 12:20 PM
123408	SA	S	RCS	CJ, Smith	Delete L.32 - 36:	01/15 12:20 PM

SPB 7000 by CJ; OGSR/Agency Employee/Victim of Domestic Violence or Sexual Violence

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Tuesday, January 15, 2013
TIME: 9:00 a.m.—12:00 noon
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 92 Negron (Identical H 119)	Searches and Seizures; Citing this act as the "Freedom from Unwarranted Surveillance Act"; prohibiting a law enforcement agency from using a drone to gather evidence or other information; authorizing an aggrieved party to initiate a civil action in order to prevent or remedy a violation of the act; prohibiting a law enforcement agency from using in any court of law in this state evidence obtained or collected in violation of the act, etc. CJ JU ACJ AP	Fav/CS Yeas 7 Nays 0
2	Presentation from the Florida Smart Justice Alliance on the 2012 Justice Summit held in Orlando December 12-14, 2012.		Presented
Consideration of proposed committee bill:			
3	SPB 7000	OGSR/Agency Employee/Victim of Domestic Violence or Sexual Violence; Amending provisions which provide a public records exemption for certain records submitted to an agency by an employee who is a victim of domestic violence or sexual violence; eliminating the scheduled repeal of the exemption under the Open Government Sunset Review Act, etc.	Submitted as Committee Bill
4	Presentation by the Department of Corrections on its use of private transportation companies.		Presented
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 92

INTRODUCER: Criminal Justice Committee and Senator Negron

SUBJECT: Searches and Seizures

DATE: January 15, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 92 creates the “Freedom from Unwarranted Surveillance Act.”

The bill prohibits law enforcement agencies, as defined by the bill, from using drones to gather evidence or other information.

The bill makes exceptions from the prohibition for certain risks of terrorist attack, for when a law enforcement agency obtains a search warrant, and under limited circumstances where an agency must act on reasonable suspicion without a warrant.

The term “drone” is defined by the bill.

Evidence gathered in violation of the bill is inadmissible in a criminal prosecution in any court of law in this state. Provisions are made in the bill for civil actions by an aggrieved party against a law enforcement agency that violates the prohibitions in the bill.

The bill becomes effective July 1, 2013.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

Drones Historically Utilized by Military in Warfare, Hostile Situations

Drones, also called Unmanned Aerial Vehicles and Unmanned Aerial Systems, will be referred to as “drone” in this bill analysis.

Although drones were utilized as far back as the war in Vietnam, the term “drone” has recently become part of the vernacular since the use of drones by the U.S. military has become more common knowledge among the civilian population.¹ Because drones are unmanned aircraft, they are especially useful in search and destroy missions where military personnel would otherwise be placed in harm’s way.

Drones are also highly capable of gathering military intelligence because drones can be quite stealthy and they can carry sophisticated surveillance equipment. For example, the U.S. Army recently acquired a 1.8 gigapixel camera to use on its drones which can track objects on the ground from 65 miles away while the drone is flying at an altitude of 20,000 feet.²

Drones can be equipped with infrared cameras,³ license plate readers⁴ and “ladar” (laser radar).⁵ It has been reported that in 2011 the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Drones range in size from wingspans of six inches to 246 feet and can weigh from approximately four ounces to over 25,600 pounds.⁷ They may be controlled manually or through an autopilot which uses a data link to connect the drone’s pilot to the drone.⁸

¹ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

² *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

³ These cameras are capable of “seeing” based upon the relative levels of heat in its viewing area. For example, see <http://www.draganfly.com/uav-helicopter/dragonflyer-x6/features/flir-camera.php>.

⁴ *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf; *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

⁵ “Ladar” is reported to produce three-dimensional images and has the capability to “see” through trees and foliage. *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf; U.S. Army, UAS Center for Excellence, *Eyes of the Army, US Army Roadmap for Unmanned Aircraft Systems 2010-2035* (2010).

⁶ Clay Dillow, *Popular Science*, September 28, 2011, popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind.

⁷ 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

⁸ *Id.*

Non-Military Drone Flight in the United States

There is usefulness for drones not just militarily but domestically as well. As far back as 2007, the Federal Aviation Administration (FAA) was aware of approximately 50 companies, universities, and government organizations developing and producing some 155 drone designs in the United States alone.⁹

Drones have been used in a multitude of tasks by U.S. government agencies, and in other countries. The first non-military use of drones by a government agency came in 2004 when the U.S. Customs and Border Patrol began to utilize them.¹⁰ In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida's shorelines and the Gulf Coast.¹¹

Other documented non-military tasks have included earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.¹²

At the University of Florida, over the last 12 years, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone with a 9 foot wingspan that is called "Nova 2.1." According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.¹³

Clearly, the drone industry is becoming motivated to move into more civilian markets.¹⁴ Reportedly Florida is competing to secure a position as a leading development, testing, and manufacturing site for drones.¹⁵

Integrating Drones into the Nation's Airspace System

In February 2012 Congress passed the FAA Modernization and Reform Act of 2012 (Act), which requires the FAA to safely open the nation's airspace to drones by September 2015.¹⁶ Under the timetable set forth by Congress, the FAA has authorized government public safety

⁹ 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, Unmanned Aircraft Operations in the National Airspace System, February 6, 2007.

¹⁰ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

¹¹ *Space Florida Probing Drone's Future Potential*, Howard Altman, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

¹² *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

¹³ *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, James Dean, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

¹⁴ *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

¹⁵ *Florida Vies to be America's Drone Capital*, RT, June 29, 2010, <http://rt.com/usa/news/florida-drone-space-unmanned-091/print/>.

¹⁶ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

agencies to operate drones under certain restrictions and made the process for approving authorization requests more efficient.¹⁷

However, the FAA appears to be proceeding with caution in its implementation of the 2012 Federal Act. The FAA has delayed selecting the six test sites for drones mandated by Congress. Further, although it seems to be outside the congressional mandate and beyond the scope of the FAA's airspace-safety responsibilities, the FAA has notified Congress that "privacy issues" have become a concern as drones are integrated into the airspace.¹⁸

The 2012 Act directed the FAA to "allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less" under certain restrictions. The Act specified that these drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace and more than five miles from any airport or other location with aviation activities.¹⁹

Prior to the passage of the Act in 2012, the FAA and the Department of Justice had been working on an agreement to streamline the Certificate of Authorization (COA) process for law enforcement agencies. Initially, law enforcement organizations will receive a COA for training and performance evaluation. When the organization has shown proficiency in flying its drone, it will receive an operational COA. The agreement between the FAA and the Department of Justice expands the allowable drone weight up to 25 pounds.²⁰

Drone Use by Law Enforcement Agencies in Florida

The FAA issued COAs to Florida law enforcement agencies as early as 2009. Those early COAs for training and trial purposes were issued to the Miami-Dade Police Department and the Polk County Sheriff's Office.²¹

Reportedly officials in Polk County, Florida, decided after a year of drone trials that the cost of meeting FAA regulations, in particular the cost of pilot training, was too high and halted use of its fixed-wing model drone in 2010.²²

¹⁷ *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, www.faa.gov/news/updates/?newsId=68004; Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

¹⁸ A *Bloomberg* report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." *FAA Going Slow on Drones as Privacy Concerns Studied*, Alan Levine, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->.

¹⁹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, Unmanned Aircraft Systems, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

²⁰ FAA Fact Sheet, Unmanned Aircraft Systems, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

²¹ The University of Florida was also the recipient of a COA from the FAA. The UF drone is reported previously in this Bill Analysis. <https://www.eff.org/file/34697>. Staff with the Florida Sheriff's Association reports that the Orange County Sheriff's Offices also has a drone program. Additional information on the Orange County program has not been provided.

²² *Space Florida Probing Drone's Future Potential*, Howard Altman, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

The Miami-Dade Police Department received its COA for drone operational status in July, 2011. It was renewed in December, 2012 for a two-year period. The Miami-Dade Police Department has two Honeywell Corporation T-Hawk Model drones. One of the T-Hawks is on lease for one dollar (\$1) while the other was procured through a Department of Justice grant program. As of January 8, 2013, the T-Hawk drones had not flown an actual operation. The Aviation Unit was deployed to the scene of an armed and barricaded subject in December, 2012 but the Unit saw no flight time.²³

Several Chiefs of Police in Florida have indicated that drones would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters or armed, barricaded suspects.²⁴ Also, one police chief reported that drones could aid police agencies in their ability to patrol and search for persons in areas like bodies of water or a wooded area.²⁵

According to one police chief, drone technology provides an opportunity to conduct patrols that are normally conducted by traditional aviation at a fraction of the cost.²⁶ Another police chief mentioned that a drone would be useful in serving high-risk search warrants, natural disasters, and other emergencies.²⁷ Drones could diminish public safety risks that might otherwise occur during a high-speed car-chase because a drone could more safely follow a fleeing vehicle, according to one police chief.²⁸

Another police chief reported that the rapid deployment and aerial platform capabilities provided by drone technology, much like the current aviation units, significantly increase the search and rescue capabilities that are essential for police assistance where time is of the essence. He cited some examples such as situations involving missing swimmers, overturned boats, missing children, missing elderly people, and hazardous material response.²⁹

Federal and Other State Legislation

Senator Rand Paul filed a bill in Congress in 2012 that was essentially identical to Senate Bill 92. Neither the Senate bill nor its House companion bill made it out of committee.³⁰ Senator Paul is reportedly refiling the bill for consideration by the 113th Congress.

Similar legislation is expected to be filed in California, Illinois, New Jersey, Oregon, Missouri, Michigan, Indiana and Virginia.³¹

²³ Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle “MAV” Program, provided to Senate Committee Staff, January 8, 2013.

²⁴ Memo provided to Senate Committee Staff on December 12, 2012 by the Florida Police Chiefs Association.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

³¹ *New ND Lawmaker 1 of Many Drafting Drone Measures*, AP story by Dave Kolpack, January 4, 2013. The North Dakota bill appears to have been filed in response to a local case where the Border Patrol offered the use of its drone to verify that three armed men were no longer armed or on the premises where law enforcement was investigating an alleged cattle rustling situation. See *State v. Broschart*, 32-2011-CR-00049, Northeast Central Judicial District, North Dakota.

III. Effect of Proposed Changes:

The short title for the bill is the “Freedom from Unwarranted Surveillance Act.” It generally prohibits law enforcement agencies from using drones to gather evidence or other information. Evidence obtained or collected by a law enforcement agency using a drone, unless it is permitted under one of the bill’s exceptions, is not admissible in a criminal prosecution in any court of law in this state.

A law enforcement agency is defined as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

In addition to the inadmissibility of evidence, a provision in the bill specifically allows for an aggrieved party to initiate a civil action to prevent or remedy a violation of the prohibitions in the bill. This language appears to provide for injunctive relief as well as actions for damages against the law enforcement agency in violation of the prohibitions in the bill.

The bill provides exceptions to the prohibition of drone use by a law enforcement agency in an information or evidence-gathering capacity. Under the exceptions a law enforcement agency may use a drone:

- To counter a high risk of a terrorist attack by an individual or organization if the U.S. Secretary of Homeland Security determines that there is credible intelligence indicating that such a risk exists.
- If the law enforcement agency first obtains a search warrant authorizing the use of a drone.
- If the law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

The bill becomes effective on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourth Amendment to the United States Constitution guarantees the people in this country security in their houses, persons, papers and possessions from unreasonable searches and seizures by government actors.³²

Article I, Section 12 of the Constitution of Florida contains the same guarantees as the Fourth Amendment, however the Florida provision specifically extends the protection to private communications. The Florida constitutional provision also states that it “shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.”³³

The U.S. Supreme Court has not heard a case that implicates the Fourth Amendment as related to a search by a drone. Therefore we cannot state with complete certainty how the court might rule should it directly address the reasonableness of a drone search.

We find some guidance, however, from the court in its rulings in cases involving aerial searches by law enforcement officers in more conventional aircraft. For example, in *Florida v. Riley* and *California v. Ciraolo* which were cases involving surveillance from altitudes of 400 and 1,000 feet in close proximity to homes, the court found that no search had occurred. The court has indicated that measuring the “objective reasonableness” of the reasonable expectation of privacy in a particular location should and will take into account how common (or unusual) the method of surveillance.³⁴ Therefore it may be argued that a drone flying or hovering at an uncommon altitude, utilizing uncommon surveillance equipment could implicate the Fourth Amendment.

Legal issues related to the bill would most likely arise in the argument of a Motion to Dismiss or a Motion to Suppress Evidence filed by a defendant who has been charged with a criminal offense based upon evidence obtained as a result of police use of a drone to gather evidence or other information.

³² The text of the Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

³³ Article I, section 12, of the Florida Constitution provides:

Section 12. Searches and seizures.—

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

³⁴ *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

The defendant's arguments would be that: 1) law enforcement violated the plain language of the drone law, therefore the evidence gathered is not admissible under that law; and 2) even if the police did not violate the drone law per se, they violated the defendant's Fourth Amendment protection against unreasonable search and the evidence is inadmissible under the exclusionary rule.³⁵

It is possible that the question of the reasonableness of a police search by use of a drone under Fourth Amendment precedence may not be reached at all. It seems more likely that the protection provided in the bill³⁶ will be viewed by the courts as a statutorily-created citizen protection that does not even implicate the Fourth Amendment. It should also be noted that generally states are free to place even more rigorous restraints upon state governmental intrusion than federal law requires.³⁷ Therefore it could be the case that the bill sets a whole new precedent in Florida law with regard to this narrow area involving the use of drones.

It is likely that the courts could focus on the fact that the bill *does not subject citizens* to a drone search let alone an unreasonable one, but rather the bill *prohibits or limits* certain *law enforcement conduct*, and that it is within the Legislature's power to protect citizens from police conduct just as it is within its power to subject citizens to police action. If the court finds that law enforcement violated the drone law, the court should rule the evidence derived as a result of that violation inadmissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill does not apply to the use of drones for any purposes other than state and local law enforcement use to gather evidence or other information. It does not restrict the use of drones for commercial, private, or research and information gathering in any way and therefore should have no impact on the scientific, commercial, or educational sectors.

Law enforcement agencies are not permitted to use information or evidence that is gathered through the prohibited use of a drone in a criminal prosecution. Therefore citizens should not be subject to criminal prosecution in cases that are based upon information or evidence gathered beyond the scope of the bill's exceptions, unless the case can be prosecuted on some independent basis.

³⁵ Under the exclusionary rule, evidence secured in violation of the Fourth Amendment is subject to exclusion (*i.e.*, suppression) in both federal and state criminal proceedings. *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961).

³⁶ The bill provides that evidence obtained is not admissible in a criminal prosecution in any court of law in Florida if that evidence is obtained in violation of the bill's prohibited drone use by law enforcement, unless the drone use falls within one of the bill's exceptions.

³⁷ *Traylor v. State*, 596 So.2d 957 (Fla. 1992).

C. Government Sector Impact:

State and local law enforcement are prohibited by the bill from using drones to gather evidence or information unless the use of the drone falls under one of the bill's exceptions to the prohibition. The evidence obtained or collected in violation of the prohibition, and outside the exceptions in the bill is inadmissible as evidence in a criminal prosecution; therefore, some criminal cases built around such evidence may be weakened or unprovable.

Law enforcement agencies may be subject to civil remedies, such as monetary damages or possibly an injunction preventing further drone activity, if sought by an aggrieved party under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 15, 2013:

- The CS includes local government code enforcement within the definition of law enforcement agency.
- The CS adopts additional exceptions to the drone-use prohibition in the bill. One of the additional exceptions allows law enforcement to use a drone if it is first authorized by a judge in a search warrant. The other exception to the prohibition occurs when a law enforcement agency possesses reasonable suspicion that under particular circumstances, swift action is necessary in order to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

B. Amendments:

None.



836310

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2013	.	
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The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment

Delete line 28
and insert:
prevention and detection of crime, local government code
enforcement, and the enforcement of penal,



816222

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/15/2013	.	
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The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 36
and insert:

(4) EXCEPTIONS.—This act does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.



816222

13 (b) If the law enforcement agency first obtains a search
14 warrant signed by a judge authorizing the use of a drone.

15 (c) The use of a drone by a law enforcement agency if
16 exigent circumstances exist. As used in this section, exigent
17 circumstances exist if the law enforcement agency possesses
18 reasonable suspicion that under particular circumstances, swift
19 action is needed to prevent imminent danger to life or serious
20 damage to property, or to forestall the imminent escape of a
21 suspect or the destruction of evidence.

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25
26 Delete line 7

27 and insert:

28 providing exceptions; authorizing an aggrieved party



123408

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2013	.	
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	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Substitute for Amendment (816222) (with title amendment)

Delete lines 32 - 36
and insert:

(4) EXCEPTIONS.—This act does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible



123408

13 intelligence indicates that there is such a risk.

14 (b) If the law enforcement agency first obtains a search
15 warrant signed by a judge authorizing the use of a drone.

16 (c) If the law enforcement agency possesses reasonable
17 suspicion that under particular circumstances, swift action is
18 needed to prevent imminent danger to life or serious damage to
19 property, or to forestall the imminent escape of a suspect or
20 the destruction of evidence.

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 7

25 and insert:

26 providing exceptions; authorizing an aggrieved party

By Senator Negrón

32-00026A-13

201392__

1 A bill to be entitled
 2 An act relating to searches and seizures; creating the
 3 "Freedom from Unwarranted Surveillance Act"; defining
 4 the terms "drone" and "law enforcement agency";
 5 prohibiting a law enforcement agency from using a
 6 drone to gather evidence or other information;
 7 providing an exception; authorizing an aggrieved party
 8 to initiate a civil action in order to prevent or
 9 remedy a violation of the act; prohibiting a law
 10 enforcement agency from using in any court of law in
 11 this state evidence obtained or collected in violation
 12 of the act; providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Searches and seizure using a drone.—
 17 (1) SHORT TITLE.—This act may be cited as the "Freedom from
 18 Unwarranted Surveillance Act."
 19 (2) DEFINITIONS.—As used in this act, the term:
 20 (a) "Drone" means a powered, aerial vehicle that:
 21 1. Does not carry a human operator;
 22 2. Uses aerodynamic forces to provide vehicle lift;
 23 3. Can fly autonomously or be piloted remotely;
 24 4. Can be expendable or recoverable; and
 25 5. Can carry a lethal or nonlethal payload.
 26 (b) "Law enforcement agency" means a lawfully established
 27 state or local public agency that is responsible for the
 28 prevention and detection of crime and the enforcement of penal,
 29 traffic, regulatory, game, or controlled substance laws.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00026A-13

201392__

30 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may
 31 not use a drone to gather evidence or other information.
 32 (4) EXCEPTIONS.—This act does not prohibit the use of a
 33 drone to counter a high risk of a terrorist attack by a specific
 34 individual or organization if the United States Secretary of
 35 Homeland Security determines that credible intelligence
 36 indicates that there is such a risk.
 37 (5) REMEDIES FOR VIOLATION.—An aggrieved party may initiate
 38 a civil action against a law enforcement agency to obtain all
 39 appropriate relief in order to prevent or remedy a violation of
 40 this act.
 41 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 42 collected in violation of this act is not admissible as evidence
 43 in a criminal prosecution in any court of law in this state.
 44 Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13
Meeting Date

Topic Searches + Seizures Bill Number SB 92
Name Robert Trammell Amendment Barcode _____ (if applicable)
Job Title Gen Counsel / FI Pub Defender (if applicable)
Address PO Box 1799 Phone 850-510-2187
Tallahassee E-mail Robert Trammell 45@gmail.com
City State Zip
Speaking: ☒ For ☐ Against ☐ Information
Representing FI Public Defenders Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13
Meeting Date

Topic Search & Seizure

Bill Number SB 92
(if applicable)

Name Keri Rayborn Silver

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1565
Street
Tallahassee FL 32302
City State Zip

Phone (850) 524-2394

E-mail Keri@raybornconsultants.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13

Meeting Date

Topic Drones

Bill Number 92
(if applicable)

Name TIM STANFIELD

Amendment Barcode _____
(if applicable)

Job Title Associate

Address 215 S. Monroe St. Suite 701

Phone 572 0358

Tallahassee FL 32308
City State Zip

E-mail _____

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Police Chiefs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/2012
Meeting Date

Topic _____ Bill Number 92
(if applicable)
Name Henry Kelley Amendment Barcode _____
(if applicable)
Job Title _____

Address 344 OAKLAND CIR Phone 850 371 0089
Street
Fort Walton Bch FL 32548
City State Zip
E-mail henry.kelley@cobaltblueinc.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)



*Smart Justice
for a Safer Florida*

Background – National and Florida Prison Population Trends

- Nationally, a 300% increased investment for corrections over the last 20 years representing 7.3% of state general fund expenditures.
- In Florida, expenditures have more than doubled over the last 20 years and corrections represents just over 8% of state general fund budget for FY 2012-13.
- Inmate population has almost tripled over the last 20 years in Florida.
- Inmates per 100,000 population went from 346.9 to 525.7 over this same period of time.



Florida is Safer Than Ever

- Florida's crime rate is at its lowest in 41 years.
- This is occurring, even as the state has closed more than 10,000 prison beds at 19 facilities.
- Florida's inmate population has actually declined slightly over the past two years – with no major increase projected over the next five years.
- Tough sentencing laws and a recent emphasis on proven rehabilitation programs have combined to enhance public safety and save taxpayer dollars.



Background – Reported Crime, Inmate Admissions and Prison Population *

	Reported crime	Guilty dispositions	Prison Admissions	Prison population
1991	1,129,704	139,134	36,752	46,233
2011	769,480	143,056	35,627	102,319
% change	-31.89%	2.82%	-3.06%	121.31%

* Reported crime and guilty dispositions based on calendar year. Prison admissions reported for state fiscal year and prison population is reported for June 30.



Background – Admissions Profile

- There are projected to be 32,555 prison admissions in Florida for the current fiscal year.
- FY 2011-12 average sentence length of 61.8 months, an increase of 9.4 months from five years ago.
- Still, roughly 60% of new prison commitments are expected to be released from prison within 24 months of admission.
- There were 6,288 technical violators sentenced to prison in FY 2011-12 and an additional 1,131 offenders on conditional or control release returned to prison.



Background – Admissions Profile

- Year-and-a-day sentences for FY 2011-12 were 2,281, a significant decrease from the peak of 6,605 during FY 2006-07
- In FY 2011-12, roughly 43% of new prison commitments were for 3rd degree felonies.
- Approximately 70% of new prison commitments during this same period were for non-violent offenses.
- In FY 2011-12, 7,773 new prison commitments were for drug offenses.



Background – Diminishing returns from increased sentence lengths

- Among 35 states surveyed, Florida reported the greatest increase (166%) of average time served from 1990 to 2009.
- This includes a 181% increase in average time served for property offenses and 194% increase in time served for drug offenses.
- Independent research has concluded that non-violent offenders could spend less time in prison with no adverse effect on public safety.
- This would allow the increased use of less costly alternatives such as work release without a negative effect on public safety.



Background – Prison Release

- In Florida, 33,073 inmates are expected to be released from prison during the current fiscal year.
- In contrast, there are roughly 4,200 work release and transition center beds to prepare the inmates that will soon be released into our communities.
- The department reports that roughly 43% of new admissions to prison in FY 2010-11 were returning inmates.
- At this rate, over 14,000 of the new admissions expected during the current year will be returning inmates.
- These inmates will cost the taxpayers of Florida \$290 million in operating costs for each year they are incarcerated.
- Capital costs for 14,000 prison beds are \$840 million.



Background – Prison Release

- Given the substantial numbers, relatively modest reductions to recidivism have a significant and compounding public safety and financial impact.
- The observed recidivism rate for inmates released from major correctional institutions is 34% vs. 21% for inmates released from work release.
- For each year of grade level tested on the Test of Adult Basic Education, there is a 3.5% decrease in probability of recidivism.
- Conversely, unresolved substance abuse issues increase the probability of recidivism by a factor of 2.6% for each one point increase in drug screening score.



Background - Summary

- The state currently has sufficient prison bed capacity for the near term as admissions and overall population have leveled out.
- Due caution is advised, however, as the underlying trends causing these declines will reach a bottom at some point.
- If the state takes advantage of the current easing in prison bed demand by focusing on smart investments in less costly and more effective programs, it will be better equipped to respond to future trend reversals that may occur.





Proposal

Smart Justice solution to high
financial and social costs of
criminal activity

Guiding Principles

- **Enhance public safety**
 - Reduce recidivism
 - Violent offenders remain in secure settings
- **Maintain integrity of state criminal laws**
 - Inmates must serve 85%
 - No changes to sentence length
- **Save taxpayer dollars**
 - Short term savings from utilizing less expensive and more effective alternatives to traditional state prison settings
 - Long term savings from reduced recidivism and a more cost effective and rational system in place to handle increased inmate populations in the future
- **Produce economic benefit**
 - grow private sector jobs
 - Promote financial independence for inmates through employment prior to and after release



Proposal - Outline

- Allow direct admission of certain **non-violent** offenders with short sentence lengths directly to secure reentry treatment facilities.
- Secure reentry treatment facilities will be minimum custody correctional facilities.
- Increase available work release beds with electronic monitoring for enhanced security.
- Convert publicly operated work release centers to private management with electronic monitoring.
- Finance increased work release with electronic monitoring and secure reentry treatment beds by closing prison beds and outsourcing department work release beds.
- Additional savings to revert to the General Revenue fund to address other critical priorities.



Sentence directly to secure reentry treatment facilities

- Minimum security correctional facilities that will specialize in providing educational, vocational and drug abuse treatment services.
- Target population will be inmates with a sentence length of three years or less.
- Priority assigned to drug offenders or offenders where substance abuse was a factor in the underlying offense.
- Inmates have to agree to participate in programming identified through screening.
- Department allowed to transfer non-compliant inmates back into general population.
- Step down to work release offered to inmates as appropriate.
- Use three newly constructed, vacant transition facilities to house these inmates.
- Private providers who specialize in transition and other programming to operate the three facilities.



Reduce prison beds to reinvest in work release and secure reentry treatment facilities

- Close one or more institutions or major units within existing institutions (2,100 beds)
- Provide operational funding for three newly constructed facilities in Miami-Dade, Baker and Gadsden counties (1,200 beds) to be used as secure reentry treatment facilities.
- Provide operational funding for 900 additional work release beds statewide with electronic monitoring.



Budget Impact – Close Prison Beds and Reinvest in Secure Reentry Treatment and Work Release

Proposal	Budget Impact
Close 2,100 prison beds	(39,880,995)
Reinvest in 1,200 transition beds at the three new facilities	21,900,000
Reinvest in 900 work release center beds with electronic monitoring	7,884,000
Net savings	(10,096,995)

Per diem for transition beds of \$50 and for work release of \$24 which includes \$4 per day for electronic monitoring. Savings represent annualized amounts and do not account for phase-in.

Department institutional administrative costs of \$1.97 per diem added to \$50.06 per diem of department operated major institutions reported for FY 2011-12. General department administrative costs not included.



Budget Impact – Convert Publicly Operated Work Release Beds to Private

Proposal	Impact
Reported cost of department operated facilities	(23,315,600)
Finance operations for 2,100 beds with electronic monitoring by private provider	18,396,000
Net savings	(4,919,600)

Savings are annualized amounts and do not account for phase-in.

Department reported operating costs plus institutional administrative per diem of \$1.97 used for department cost. General department administrative costs not included.

Privately operated beds calculated at per diem of \$24 which includes \$4 for electronic monitoring.



Budget Impact Summary

Proposal	Savings
Utilize work release with electronic monitoring and reentry treatment in lieu of major institutions	10,096,995
Convert publically operated work release to private providers	4,919,600
Total savings	15,016,595
Reinvest half of savings into additional programming	7,508,298
Savings available to reinvest in other state priorities	7,508,297

Annualized amounts that do not account for phase-in schedule in first year.



Reduce Recidivism – Potential Long-term Cost Avoidance

Summary of potential cost avoidance	Projected decrease in admissions	Projected operating costs (36 months)	Capital Costs	Total All Costs
First year	144	9,087,822	22,488,289	31,576,111
Second year	132	8,499,718		8,499,718
Third year	84	5,509,722		5,509,722
Total	359	23,097,263	22,488,289	45,585,552

Assumes single cohort of 2,100 inmates released from work release or transition at 6% reduction in recidivism rate and single cohort of 2,038 inmates served by private specialty providers instead of the department at 5.5% reduction to recidivism rate.

Assumes 3 year length of stay. Operating and capital costs from the Florida Criminal Justice Estimating Impact conference.





Florida Smart Justice Registered Voters Survey



800 Registered Voters

December 3-4, 2012

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- Key Take-Away Points
- Criminal Justice Proposals – Initial Favor/Oppose
- Supporter Messaging
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- Demographics

Methodology

- Fabrizio, McLaughlin & Associates conducted a survey statewide in Florida of 800 registered voters.
- Interviews were stratified into proportionate geographic units based on the population of registered voters.
- Survey conducted December 3rd – 4th, 2012.
- Margin of error at the 95% confidence interval for 800 registered voters is $\pm 3.46\%$.
- 680 voters (85%) surveyed via landline. 120 voters (15%) surveyed via cell phone.



Key Take-Away Points



Key Take-Aways

- There is strong support for the proposals tested even the very first time they are described to voters.
 - Initial support for the proposals is high regardless of political party.
- The proposal support is based on the definition of non-violent criminals that was described to voters in the survey – any change in the specific groups of criminals that would be impacted by these proposals could substantially change voters' attitudes about the proposals.
- There is strong agreement that someone who supports these reform proposals can still be considered “tough on crime.”
- Based on the strong initial support, it is not surprising that the supporter messages tested much stronger than the opponent messages.
- Support for all three proposals remained just as strong or even became stronger after voters heard both sides messages.
- Voters still strongly agree that you can support these reforms and still be “tough on crime” after hearing the messages.



Criminal Justice Proposals - Initial Favor/Oppose



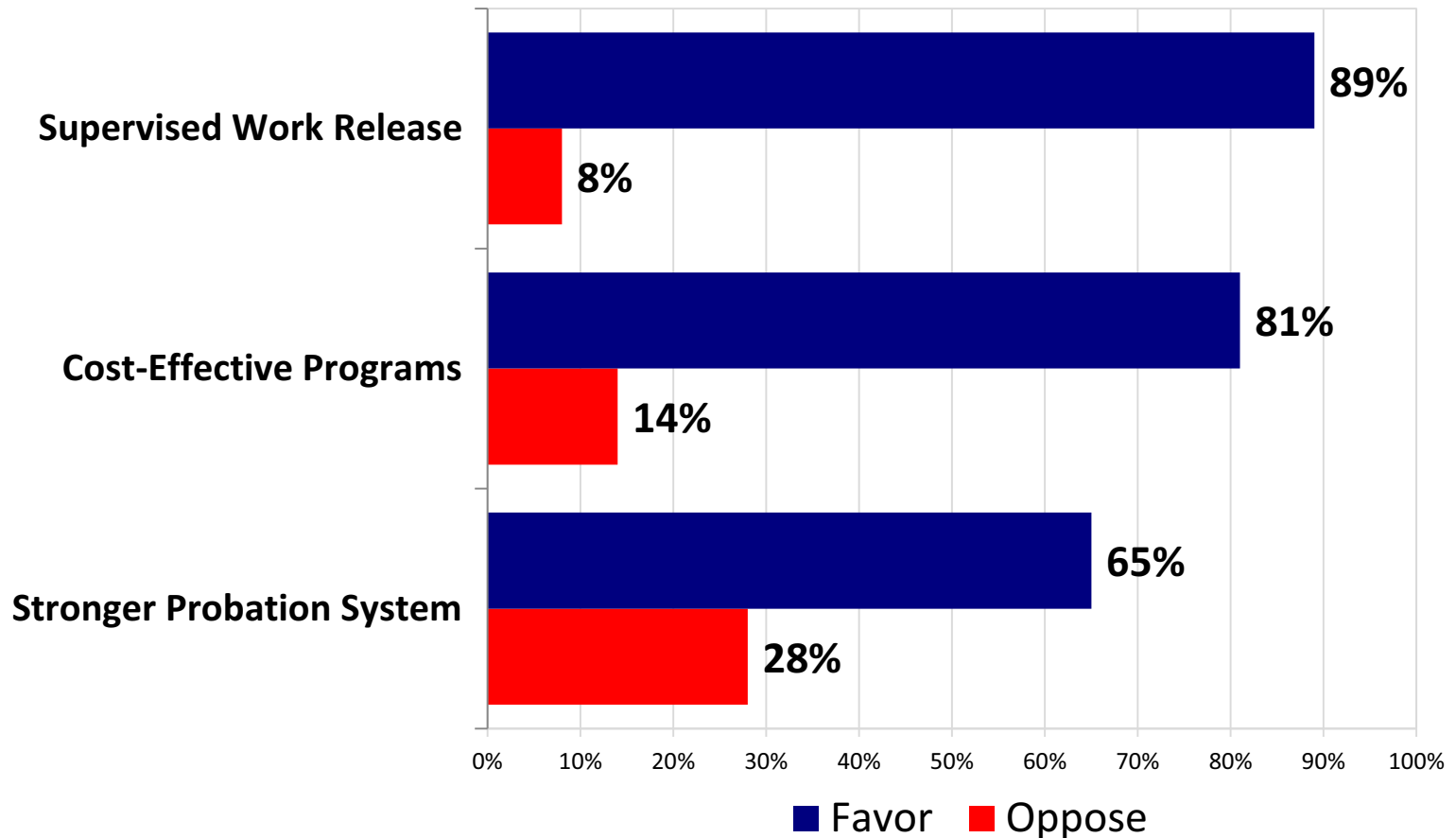
Proposal Introduction Language & Proposals Legend

Introduction: *"Now I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans."*

Abbreviation	Full Proposal
Supervised Work Release	Reforming Florida law to allow for implementing supervised work release programs for non-violent criminals with the earnings from their work used to pay back victims, pay back court costs and pay child support to their children.
Cost-Effective Programs	Changing Florida law to use cost-effective programs such as community supervision, mandatory drug testing and treatment programs for people convicted of non-violent crimes while they are in prison or getting ready to reenter society.
Stronger Probation System	Reforming Florida laws that currently require that non-violent criminals must be sent to prison so that fewer have to serve time in prison and use the savings to taxpayers to instead create a stronger probation system.

Criminal Justice Proposals – Overall

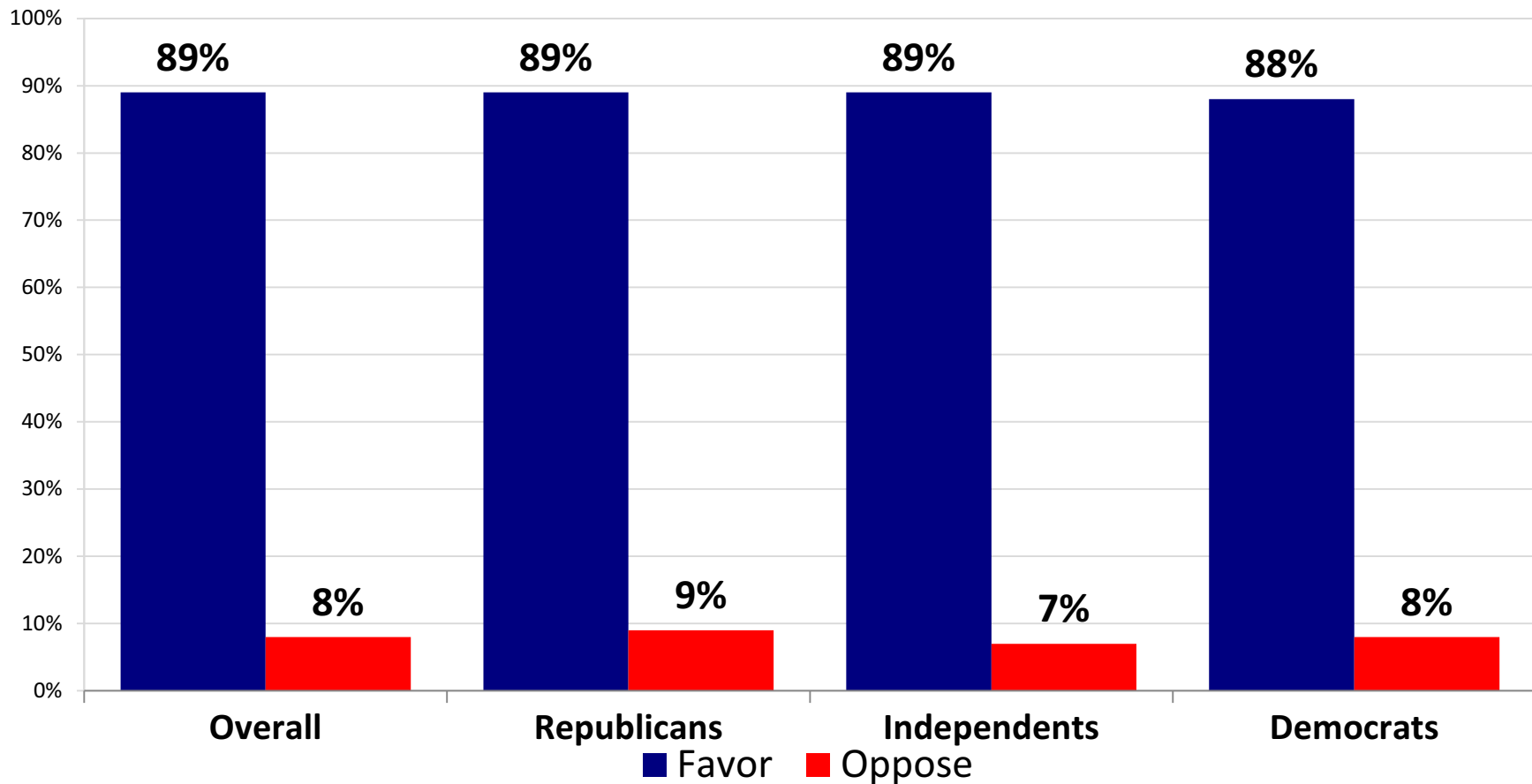
- Strong initial support with all 3 proposals favored by at least two-thirds of voters.
- There is near universal support from the beginning for the supervised work release program.
- 4 in 5 favor implementing cost-effective programs such as drug testing and treatment programs.
- 65% favor using the savings from sending fewer non-violent criminals to prison to create a stronger probation system.



Now I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Supervised Work Release – By Party

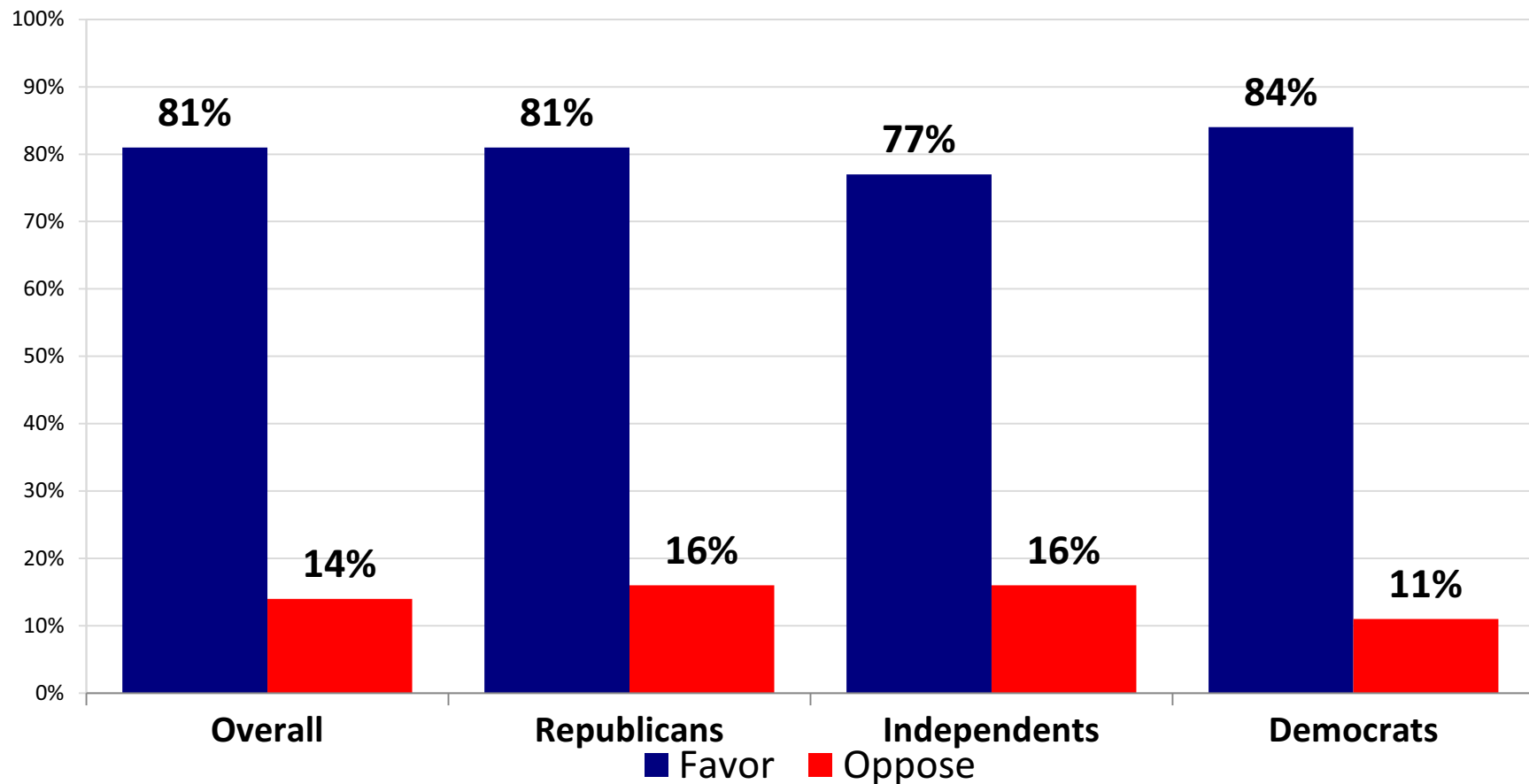
- *Regardless of political party voters strongly favor this program.*



Now I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Cost-Effective Programs – By Party

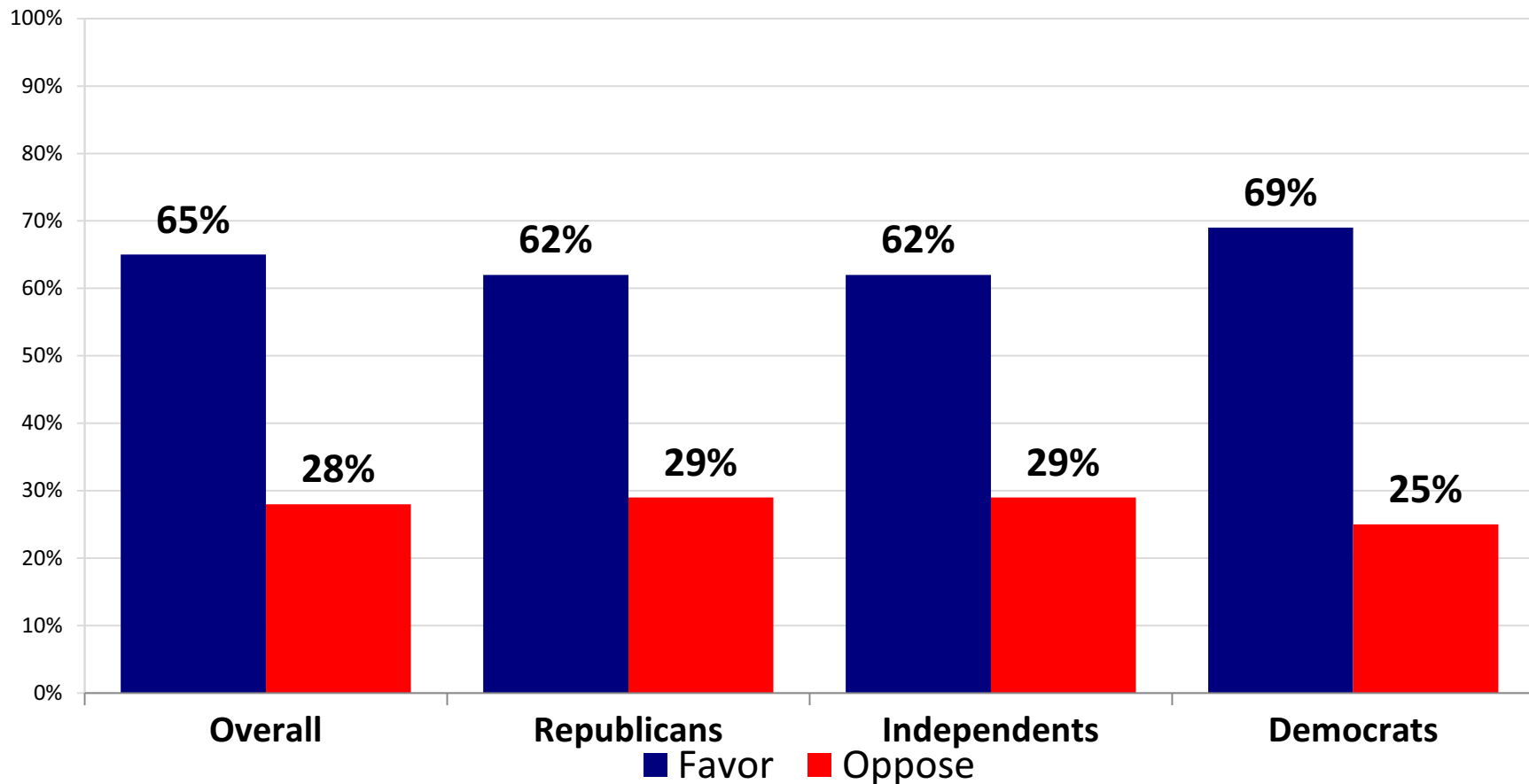
- *More than three-quarters support these programs regardless of their political affiliation.*



Now I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Stronger Probation System – By Party

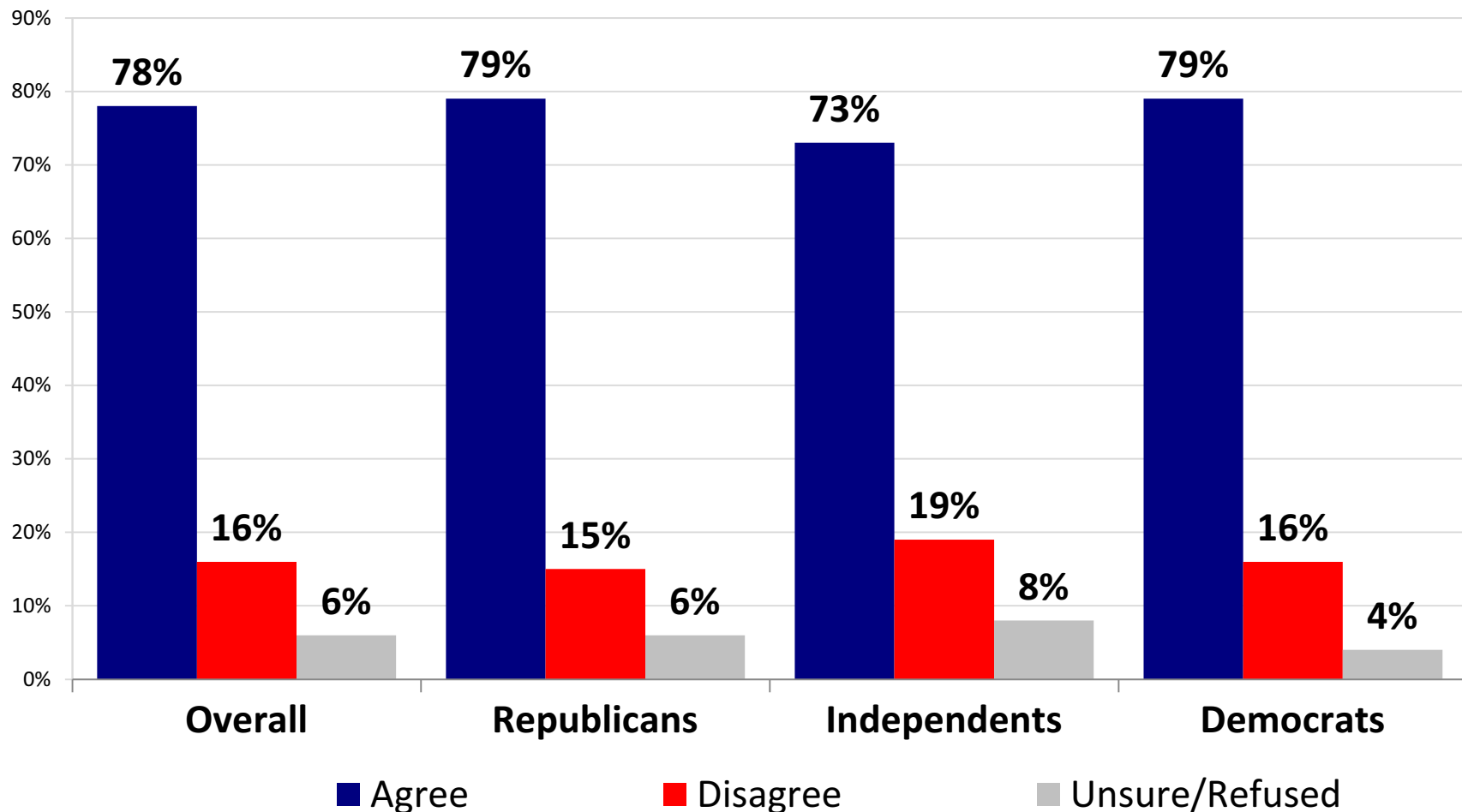
- Better than 3 in 5 of both Republicans and Independents favor the stronger probation system.
- Support among Democrats is even higher with 69% favoring the proposal.



Now I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Agree/Disagree - “Tough on Crime”

- A strong majority agrees that you can still be considered ‘tough on crime’ if you support cost-effective programs for people convicted of non-violent crimes.
- Regardless of political party large majorities agree with the statement.



Please tell me if you agree or disagree with the following statement. “A person who is ‘tough on crime’ can support cost-effective programs for people convicted of non-violent crimes, such as community supervision, mandatory drug testing and treatment programs that reduce the likelihood the offender would commit a new crime, and also save Florida taxpayers significant dollars.”



Supporter Messaging

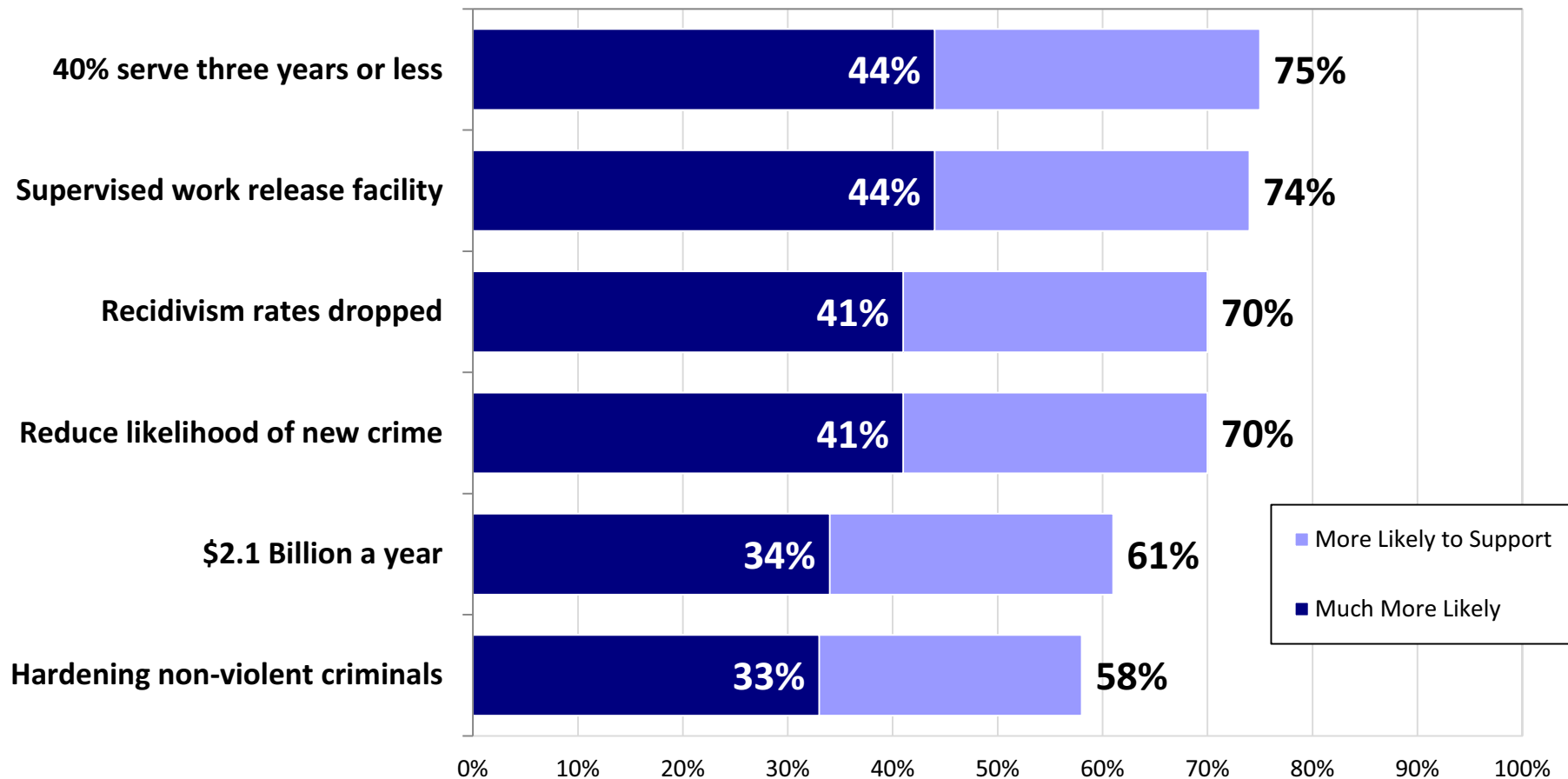


Supporter Messaging Legend

Abbreviation	Full Message
40% serve three years or less	40% of the people sent to Florida prisons serve three years or less and they would be better off in work release or treatment programs than just sending them to prison.
Supervised work release facility	Placing someone convicted of a non-violent crime in a supervised work release facility would cut the cost to taxpayers in half compared to just sending the person to prison.
Recidivism rates dropped	Currently, nearly one-third of those released from Florida prisons end up back in prison. In other states that have implemented these programs, the number of released prisoners who end up back in prison dropped significantly.
Reduce likelihood of new crime	Cost-effective programs such as community supervision, mandatory drug testing and treatment programs for people convicted of non-violent crimes will not only save taxpayer dollars but reduce the likelihood the person would commit a new crime.
\$2.1 Billion a year	These reforms are necessary because the price tag for running Florida's prisons and corrections department is now costing Florida taxpayers \$2.1 billion dollars a year.
Hardening non-violent criminals	Prisons play an important role in keeping dangerous criminals away from the public, but they also have the unintended consequence of hardening non-violent criminals, making them a greater risk to people when they get out of prison than they were when they went to prison.

Supporter Messaging Effectiveness – Overall

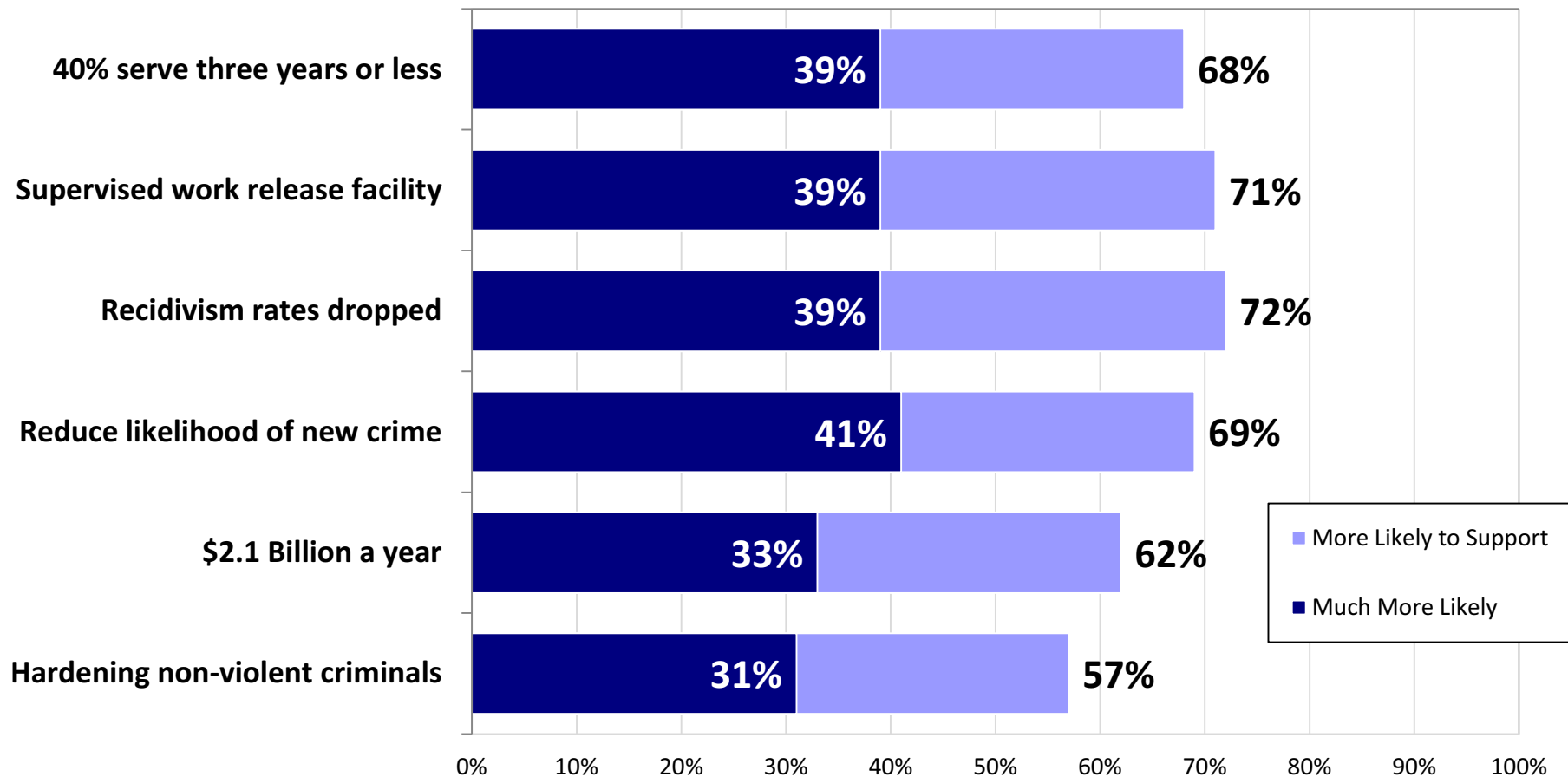
- All 6 of the supporter messages tested well with strong majorities for each saying the message makes them even more likely to support the proposed reforms.



Now I'm going to read you some of the arguments that SUPPORTERS of the proposals to reform Florida's criminal justice system are making. And as a reminder, whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After hearing each of the arguments I read to you, please tell me whether it would make you MORE likely or LESS likely to support the reforms. If it has no impact on you, just say so.

Supporter Messaging Effectiveness – Republicans

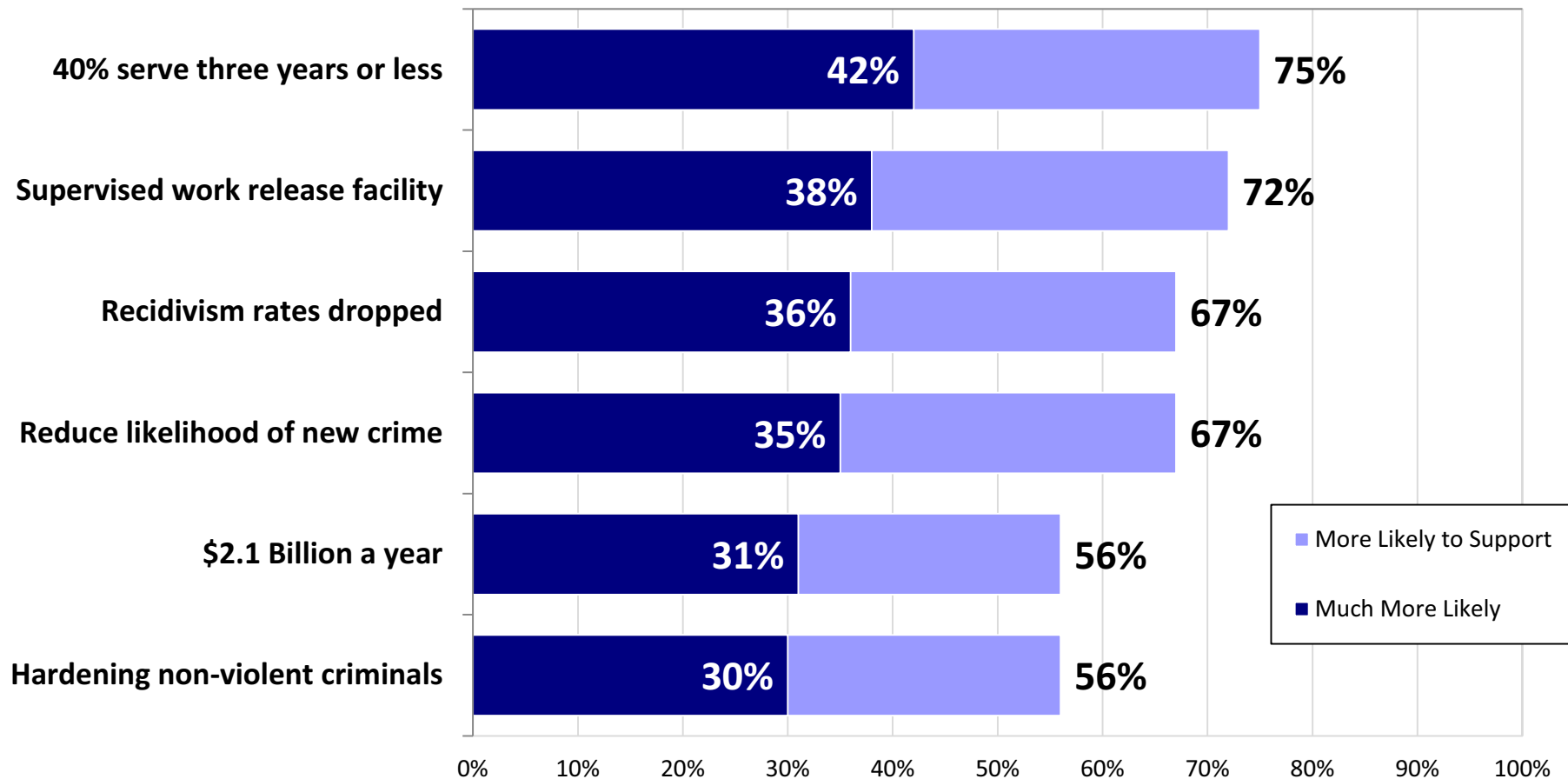
- While all of the messages tested well with Republicans, the top message was that other states who've implemented these programs have seen fewer criminals end up back in prison.



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Supporter Messaging Effectiveness – Independents

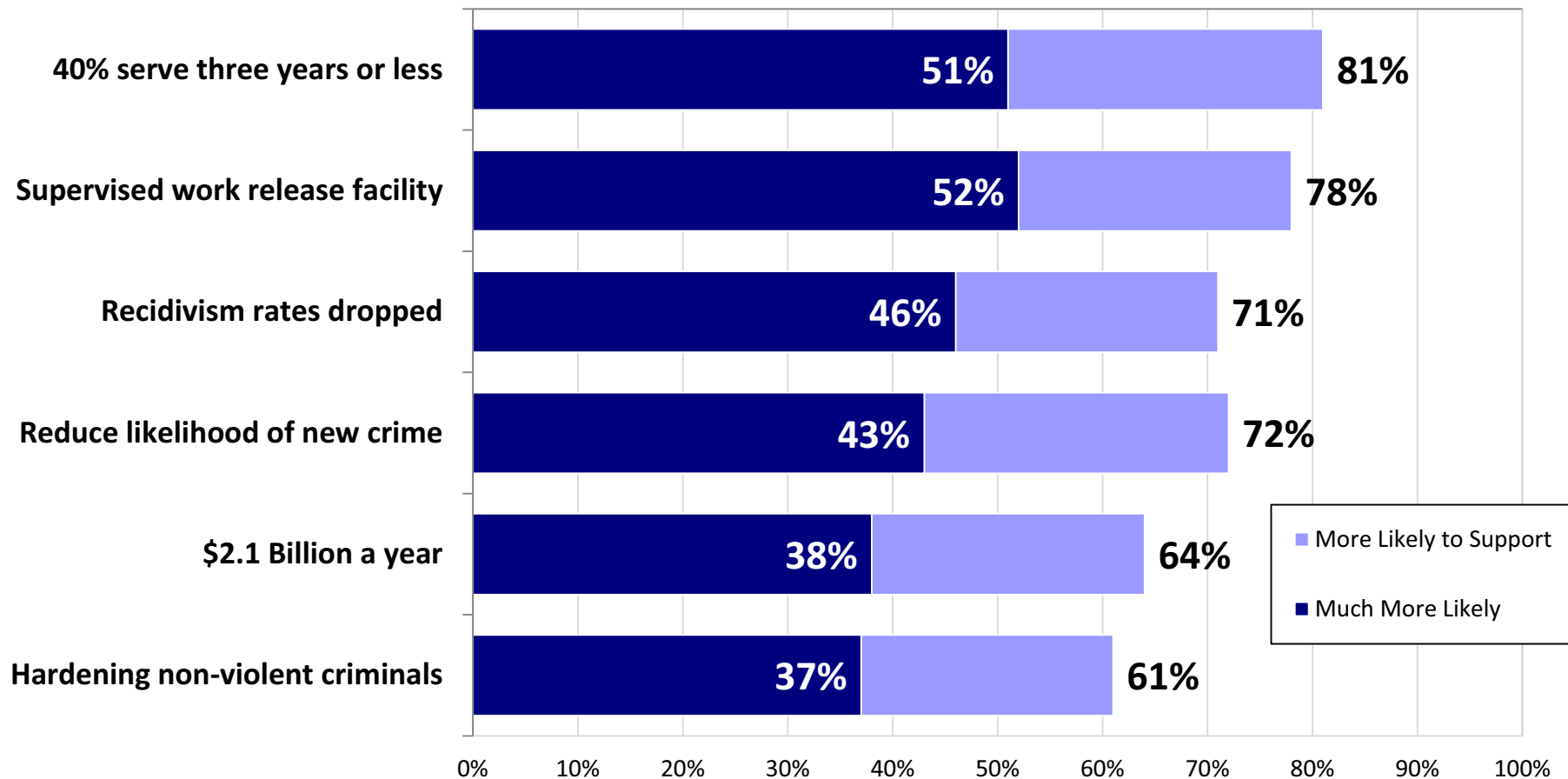
- Again, all 6 messages tested well with Independents but the strongest message was that 40% serve 3 years or less and they would be better off in treatment and work release programs instead of just sending them to prison.



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Supporter Messaging Effectiveness – Democrats

- Again, all 6 supporter messages tested strongly with Democrats, and the top scoring message was some prisoners with shorter sentences would be better off in treatment or work release programs instead of just sending them to prison.



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Supporter Messaging Ranking Table

Message	Overall	Republicans	Independents	Democrats
40% serve three years or less	1	4	1	1
Supervised work release facility	2	2	2	2
Recidivism rates dropped	3t	1	3	4
Reduce likelihood of new crime	3t	3	4	3
\$2.1 Billion a year	5	5	5	5
Hardening non-violent criminals	6	6	6	6



Opponent Messaging

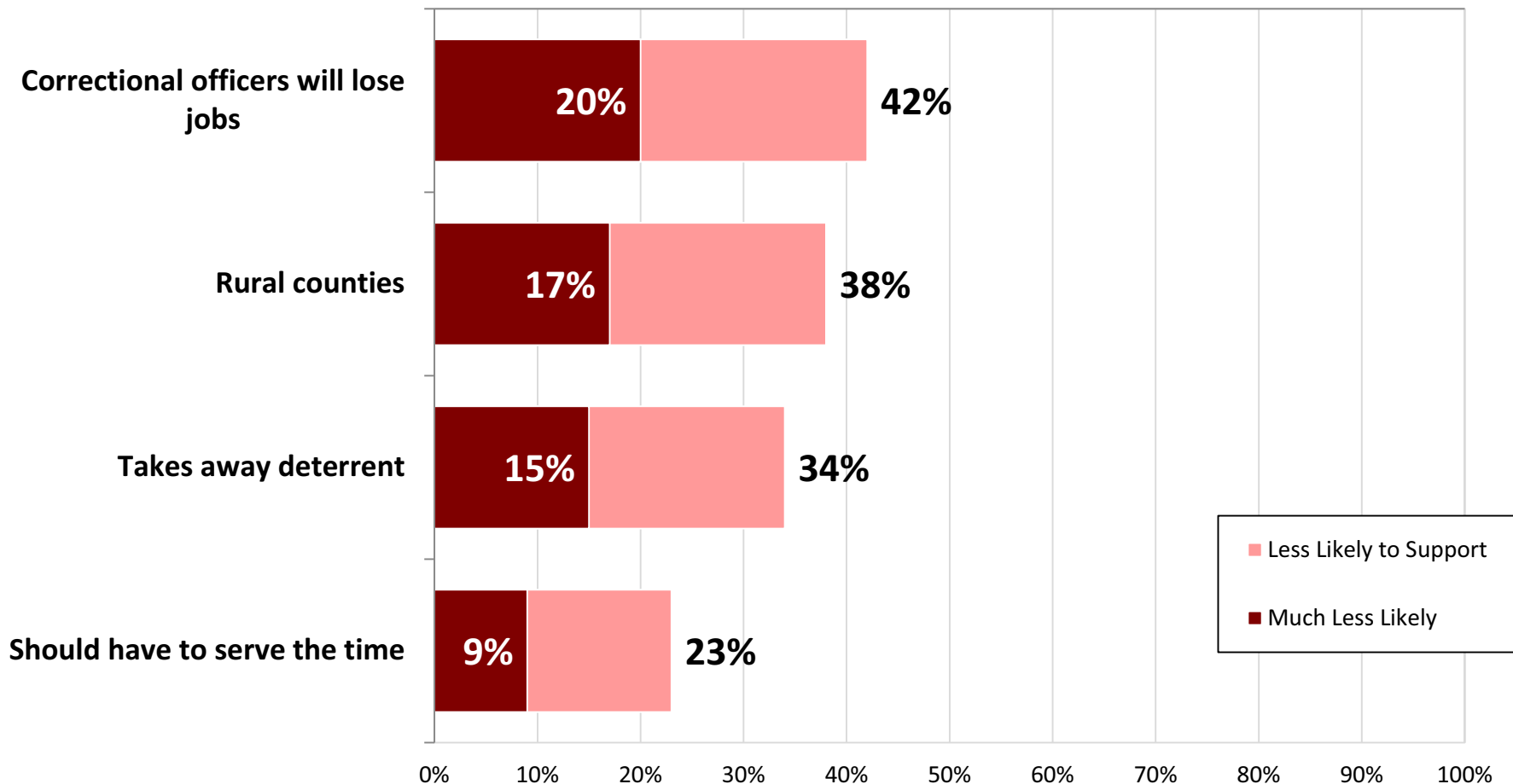


Opponent Messaging Legend

Abbreviation	Full Message
Correctional officers will lose jobs	These new laws will cause thousands of correctional officers to lose their jobs.
Rural counties	In rural counties, prisons are a major source of employment and these laws will cause prisons in these rural counties to close meaning lots of people will lose their jobs – and it's not just prison guards but it would include cooks, maintenance staff, administrative staff, local suppliers and local businesses.
Takes away deterrent	Prison is supposed to be a deterrent to committing crime and by taking away the threat of people having to go to prison, the number of crimes will increase.
Should have to serve the time	Prison is a punishment for breaking the law and if you commit the crime you should have to serve the time.

Opponent Messaging Effectiveness – Overall

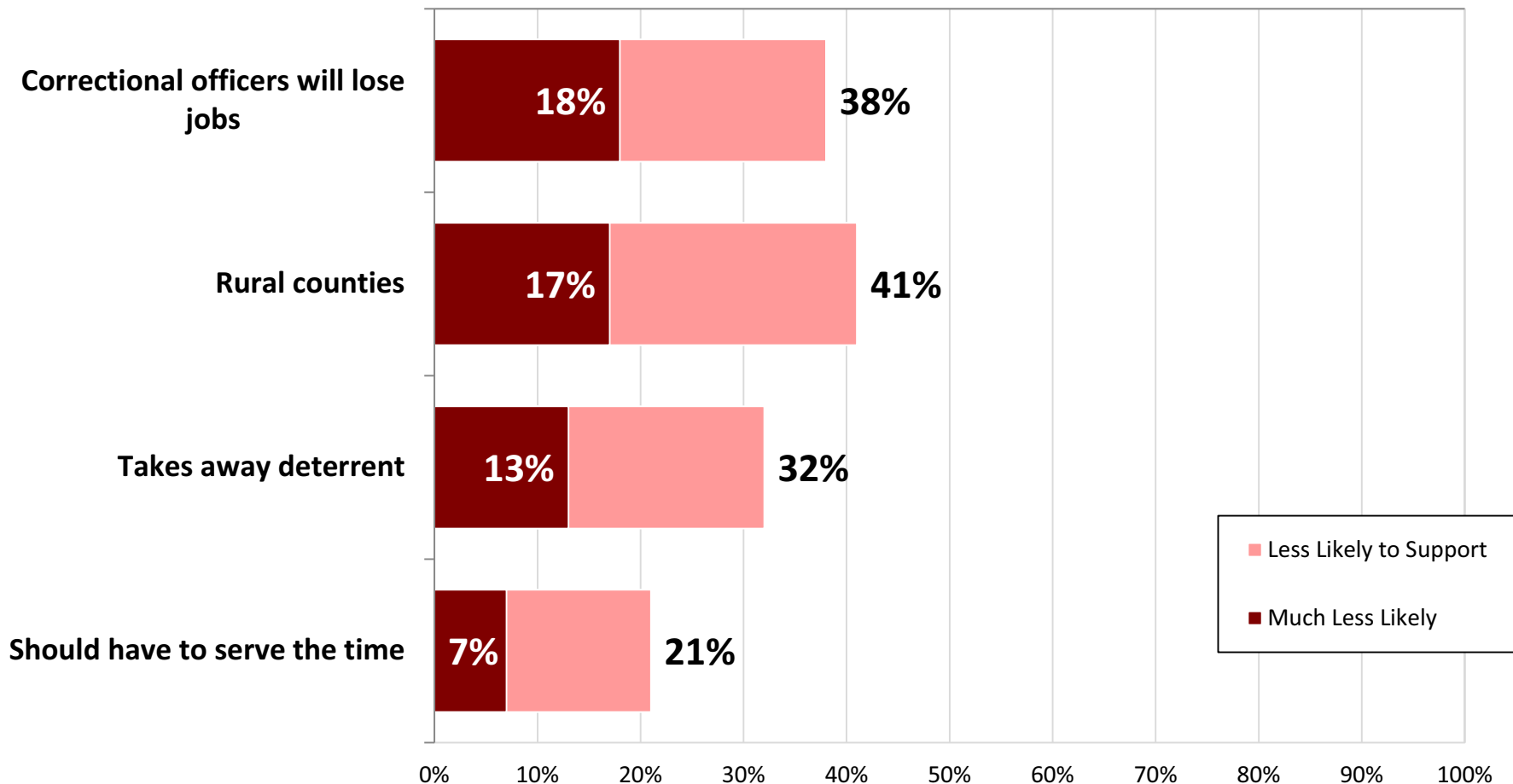
- Overall, all 4 of the opponent messages fell flat, especially when compared to the supporter message scores.



Now I'm going to read you some of the arguments that OPPONENTS of the proposals to reform Florida's criminal justice system are making. And as a reminder, whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After hearing each of the arguments I read to you, please tell me whether it would make you MORE likely or LESS likely to support the reform. If it has no impact on you, just say so.

Opponent Messaging Effectiveness – Republicans

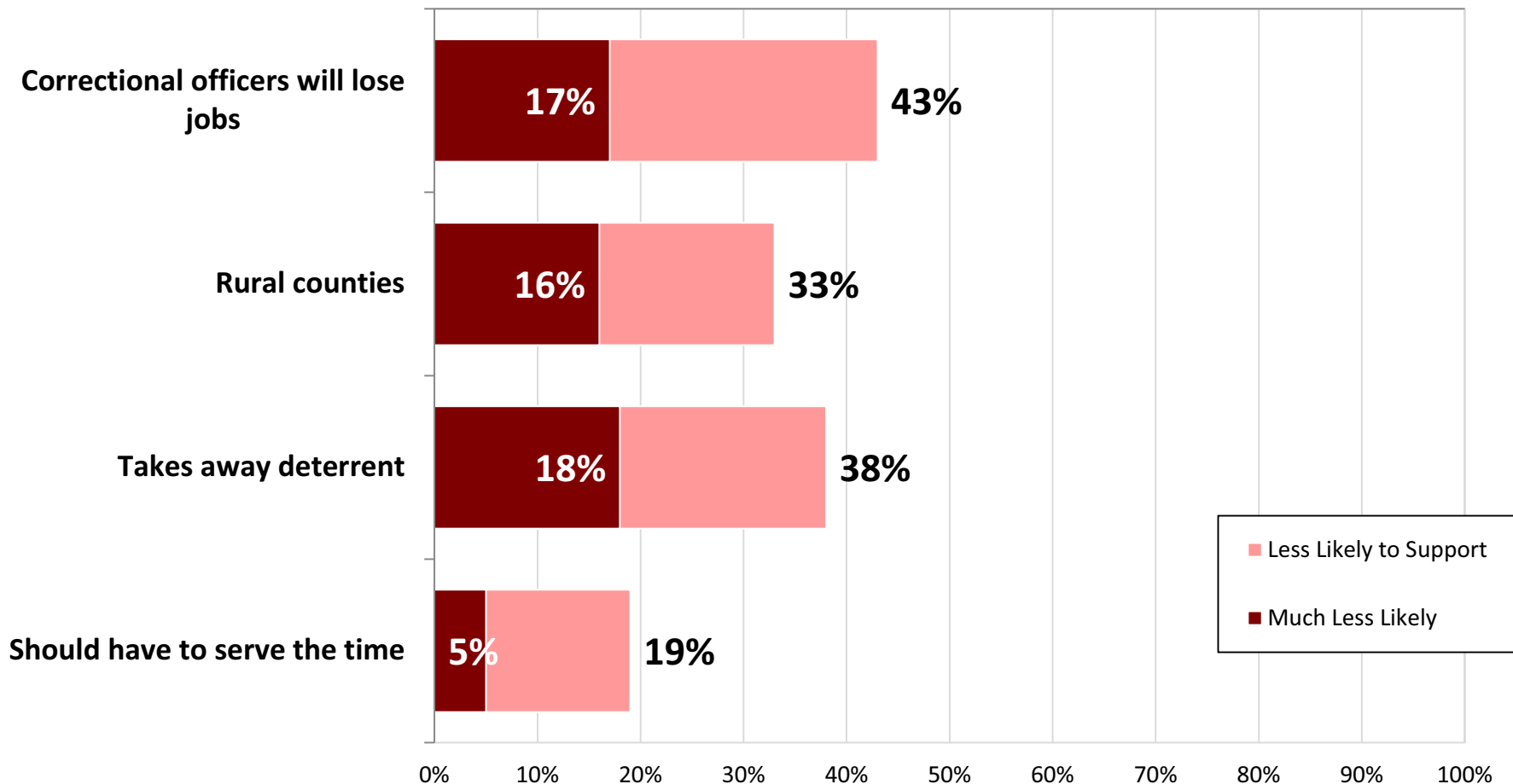
- Opponent message scores were weak with Republican voters.
- The top opponent message with Republicans was the impact on rural counties and jobs where many of these prisons are.



Now I'm going to read you some of the arguments that OPPONENTS of the proposals to reform Florida's criminal justice system are making. And as a reminder, whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After hearing each of the arguments I read to you, please tell me whether it would make you MORE likely or LESS likely to support the reform. If it has no impact on you, just say so.

Opponent Messaging Effectiveness – Independents

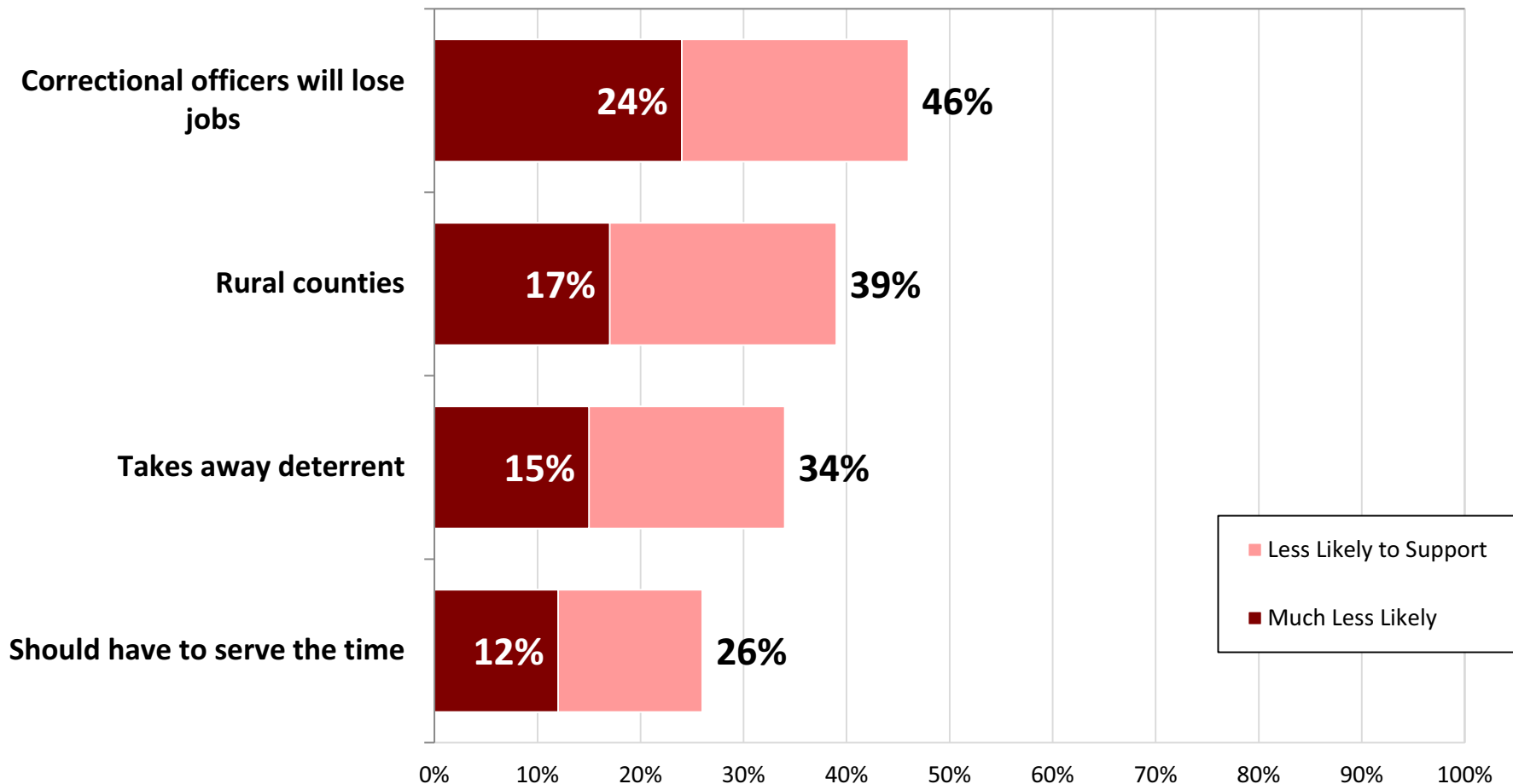
- Opponent messages were also weak with Independents with the top scoring message that thousands of correctional officers will lose their jobs.



Now I'm going to read you some of the arguments that OPPONENTS of the proposals to reform Florida's criminal justice system are making. And as a reminder, whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After hearing each of the arguments I read to you, please tell me whether it would make you MORE likely or LESS likely to support the reform. If it has no impact on you, just say so.

Opponent Messaging Effectiveness – Democrats

- Again, none of the opponent messages even break 50% less likely to support with Democrats – a sign of a somewhat weak message.
- The top opponent message with Democrats was the loss of correctional officer jobs.



Now I'm going to read you some of the arguments that OPPONENTS of the proposals to reform Florida's criminal justice system are making. And as a reminder, whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After hearing each of the arguments I read to you, please tell me whether it would make you MORE likely or LESS likely to support the reform. If it has no impact on you, just say so.

Opponent Messaging Ranking Table

Message	Overall	Republicans	Independents	Democrats
Correctional officers will lose jobs	1	2	1	1
Rural counties	2	1	3	2
Takes away deterrent	3	3	2	3
Should have to serve the time	4	4	4	4

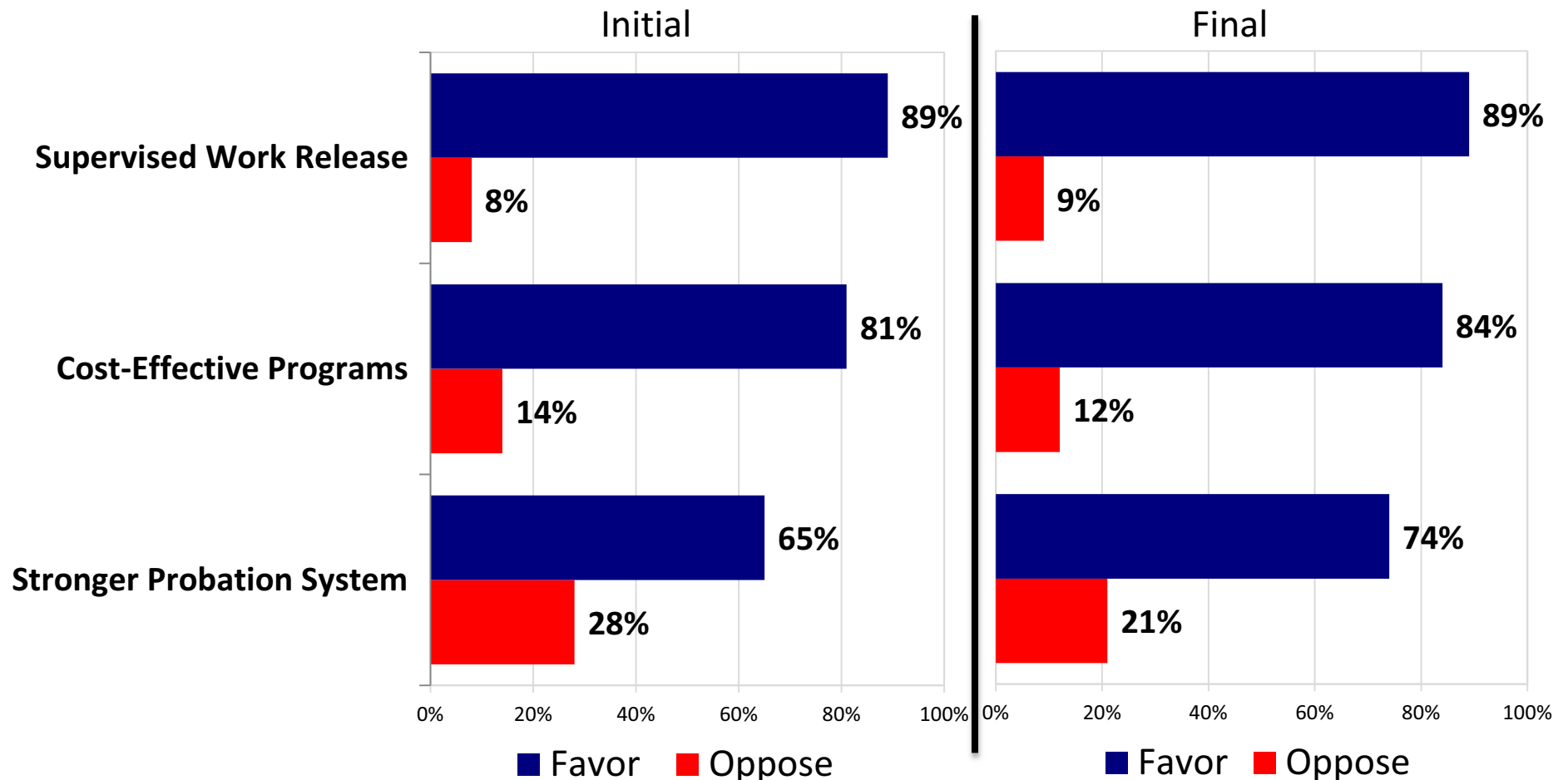


Criminal Justice Proposals - Final Favor/Oppose



Criminal Justice Proposals – Overall

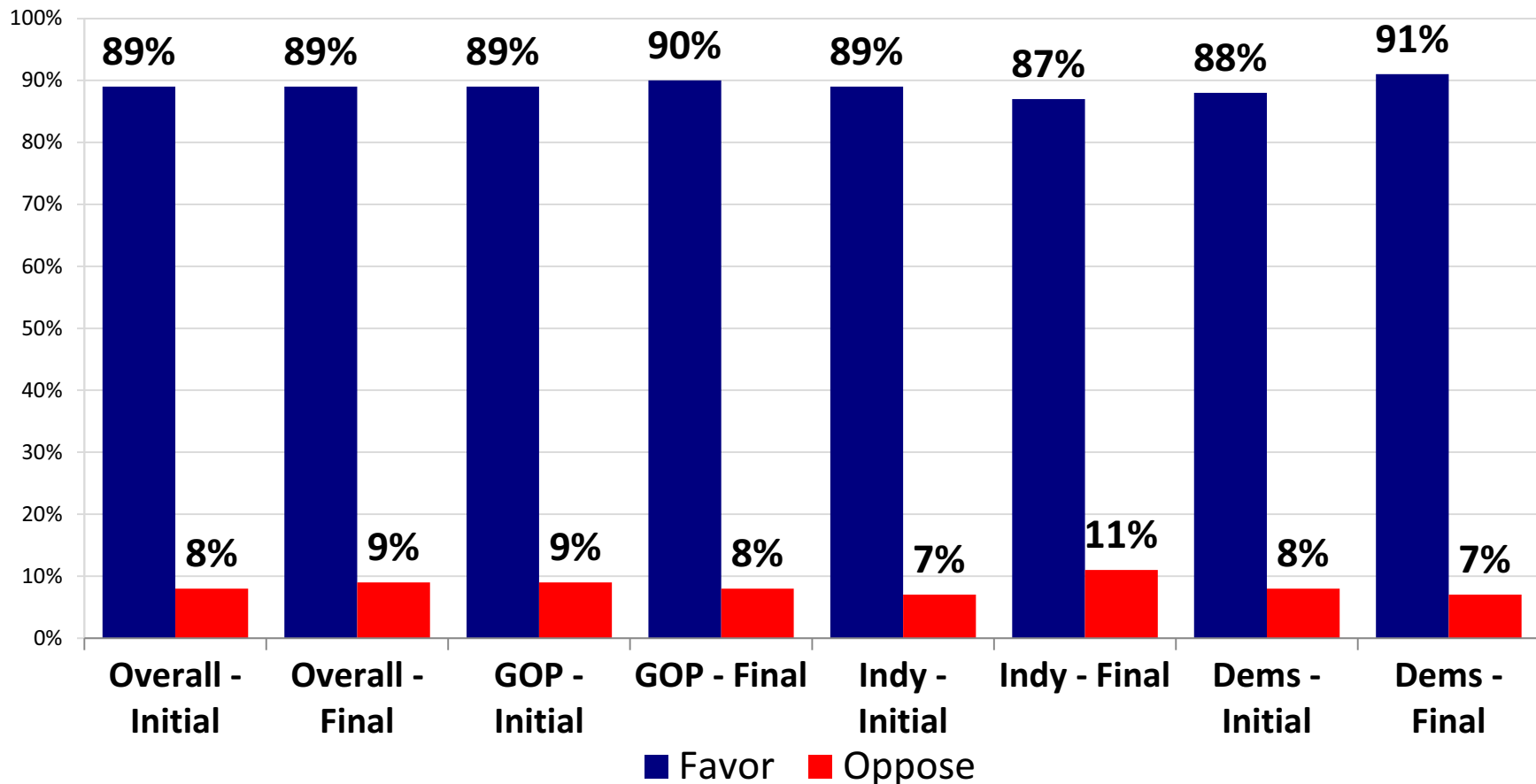
- Overall support for the supervised work release program remained very strong after both sides messages were heard.
- Support for both the cost-effective programs and the stronger probation system grew after voters heard both sides messages.



Now again, after hearing all of this, I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Supervised Work Release – By Party

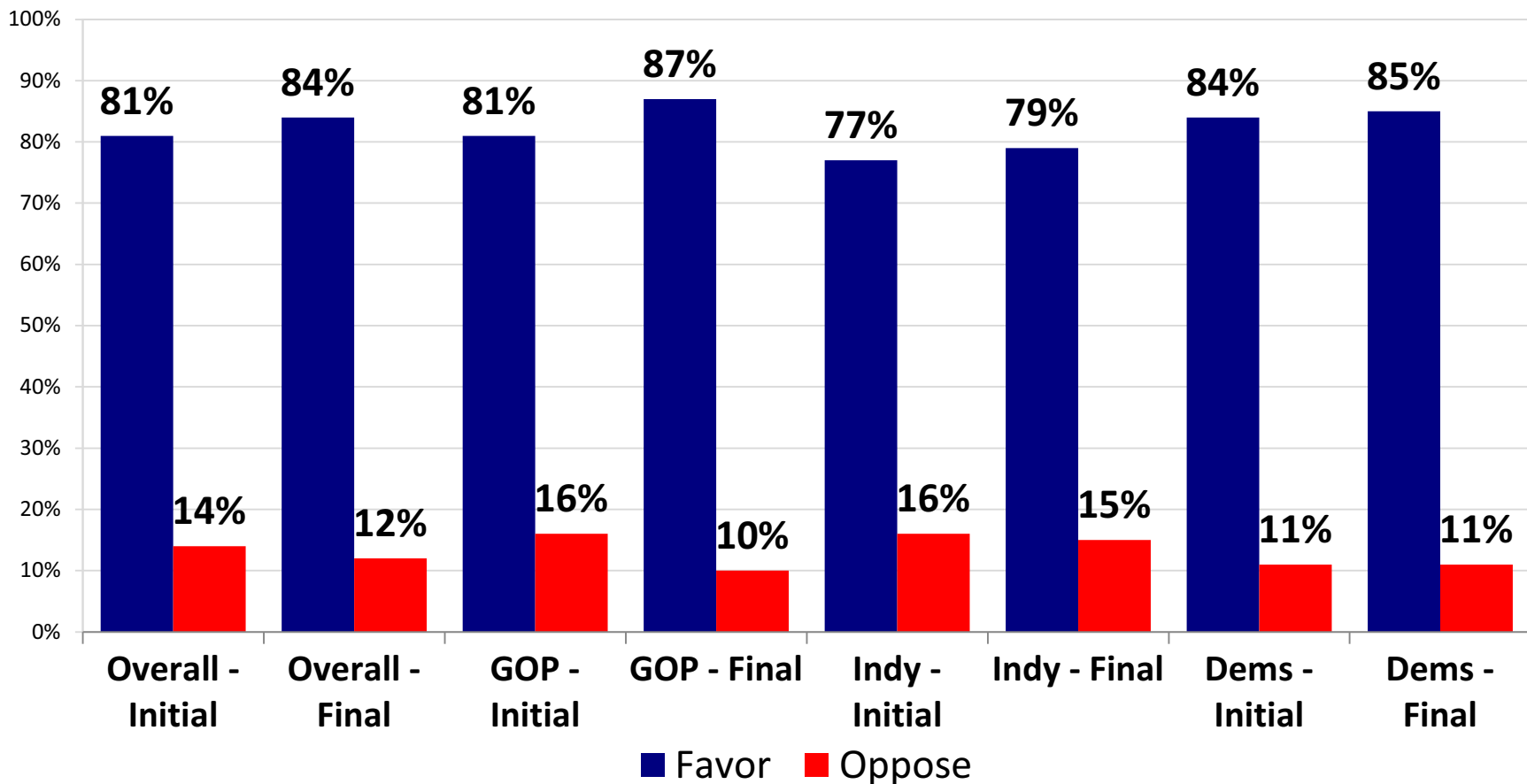
- After hearing both sides messages, there remained near universal support for the supervised work release program regardless of political party.



Now again, after hearing all of this, I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Cost-Effective Programs – By Party

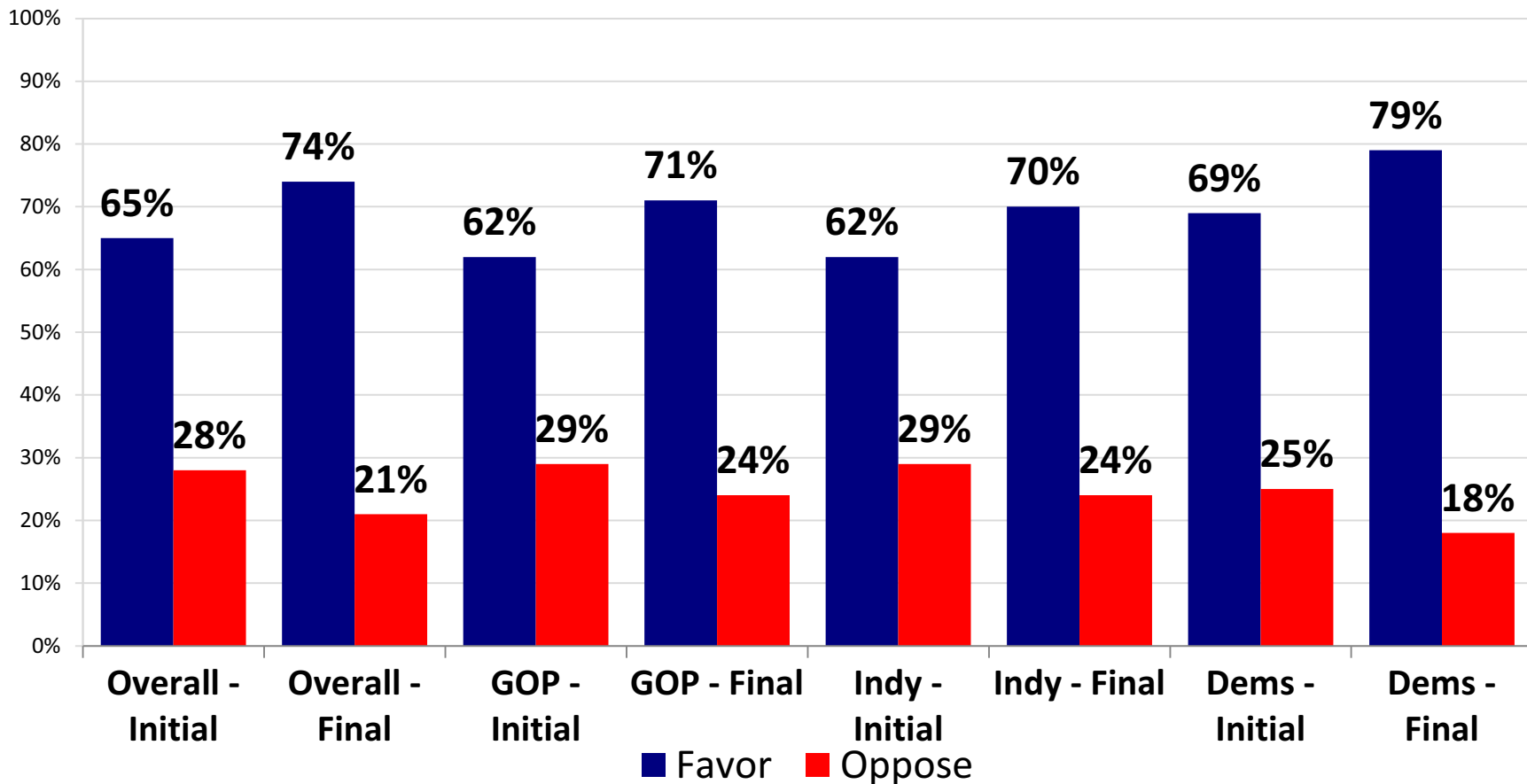
- Support for the cost-effective programs ticked up slightly with Republicans, Democrats and Independents after hearing both sides messages.
- The biggest movement by party came with Republicans who went from favoring it by +65 to favoring the proposal by +77.



Now again, after hearing all of this, I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Stronger Probation System – By Party

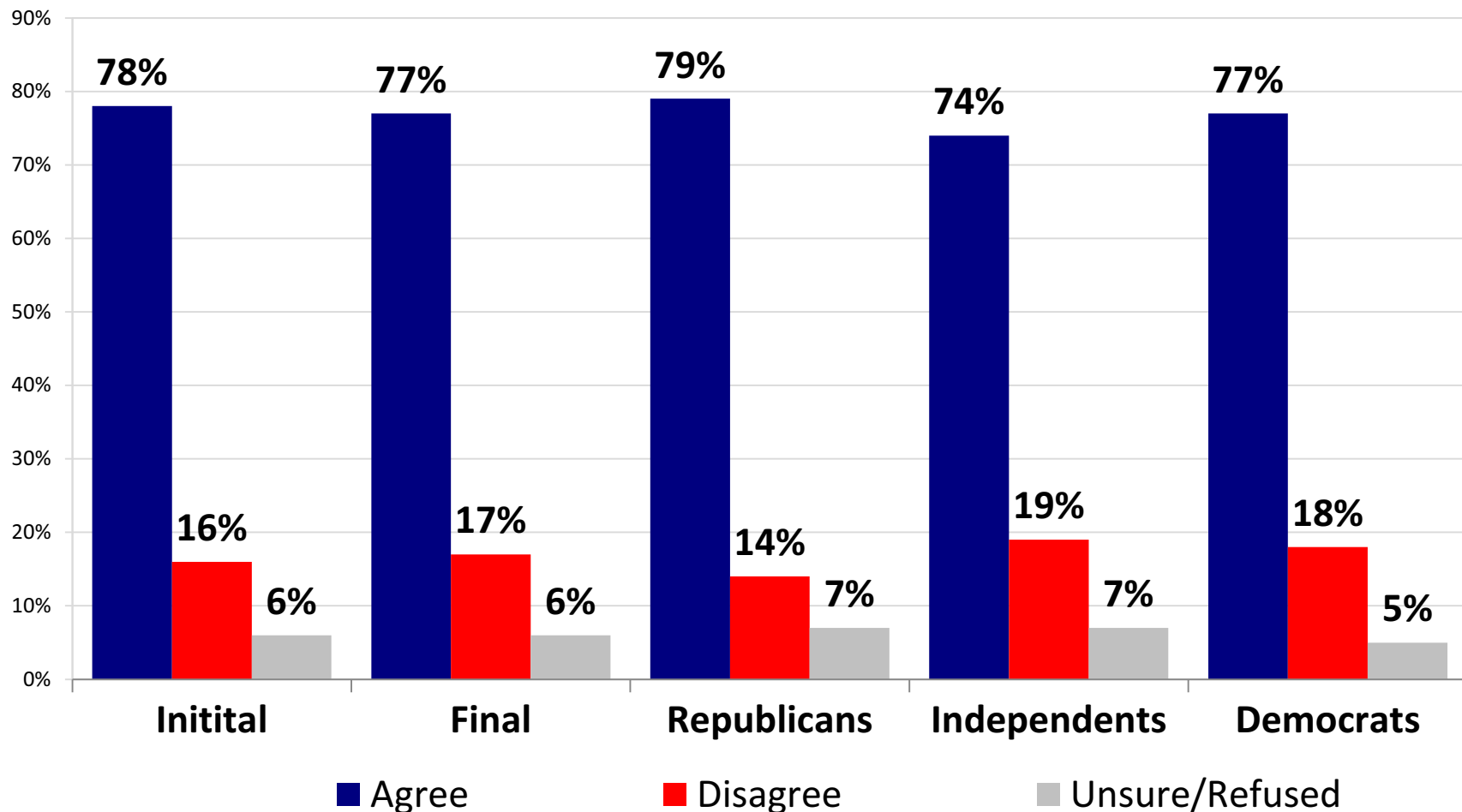
- After hearing both sides messages support for the stronger probation system increased regardless of political party.
- While there was solid movement to support from all 3 parties, the largest movement came with Democrats who went from initially favoring the reform +44 to favoring the reform +61 after messaging.



Now again, after hearing all of this, I'm going to read you several proposals that are being considered by the Florida Legislature regarding Florida's criminal justice system. When I read you these proposals they will be referring to a specific group of non-violent criminals. Whenever I talk about non-violent criminals, I am referring specifically to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans. There was no gun or weapon used when they committed the crime and the crime was more of a property crime and not a crime committed against another person. After I read you each of the proposals, please tell me whether you favor or oppose that specific proposal. And just as a reminder, when I refer to non-violent criminals, I am specifically referring to criminals who were arrested for drug abuse or mental health issues or non-violent criminals who are military veterans.

Agree/Disagree - “Tough on Crime”

- After hearing all of the messages, voters still strongly agree that a person who supports these cost effective programs can still be considered “tough on crime.”
- There is strong agreement with the statement regardless of political party.



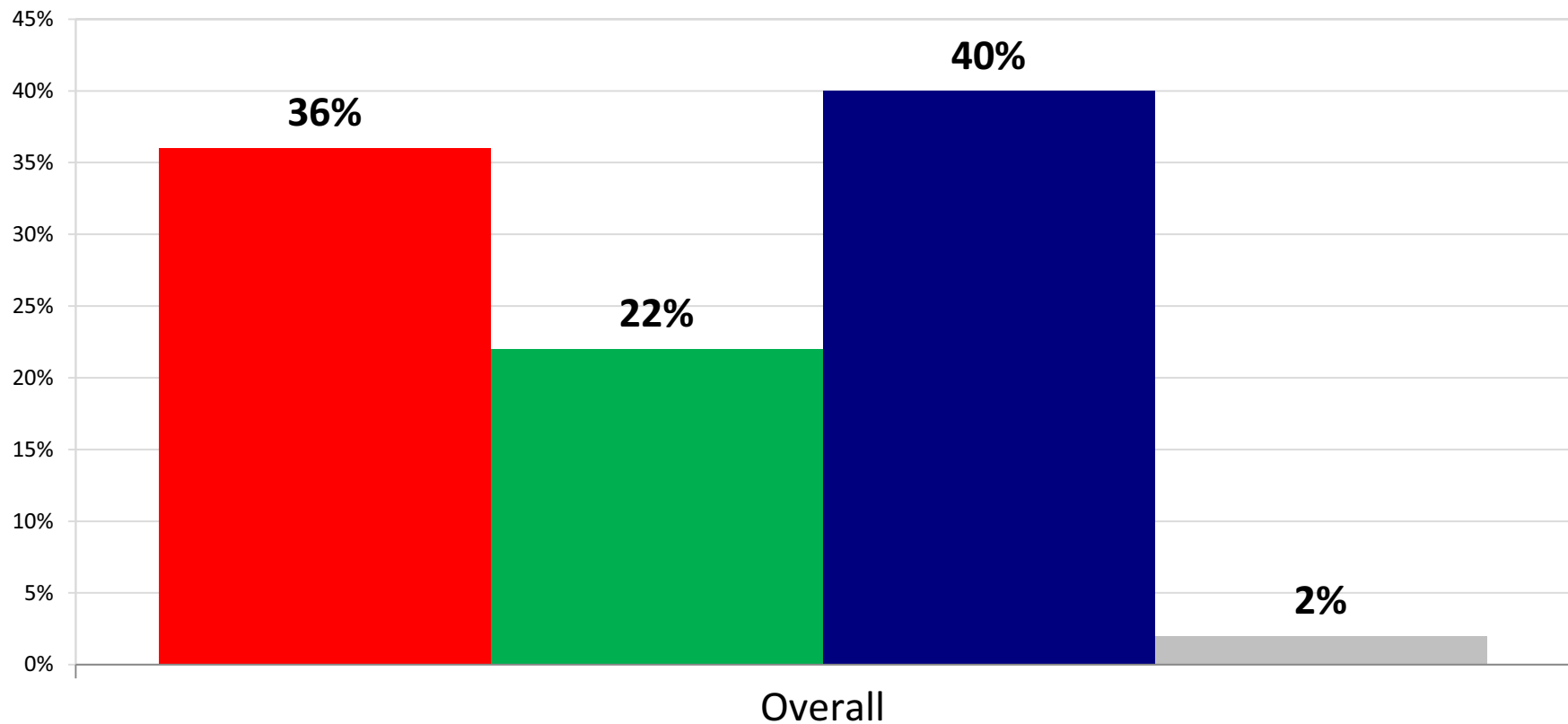
Please tell me if you agree or disagree with the following statement. “A person who is “tough on crime” can support cost-effective programs for people convicted of non-violent crimes, such as community supervision, mandatory drug testing and treatment programs that reduce the likelihood the offender would commit a new crime, and also save Florida taxpayers significant dollars.”



Demographics



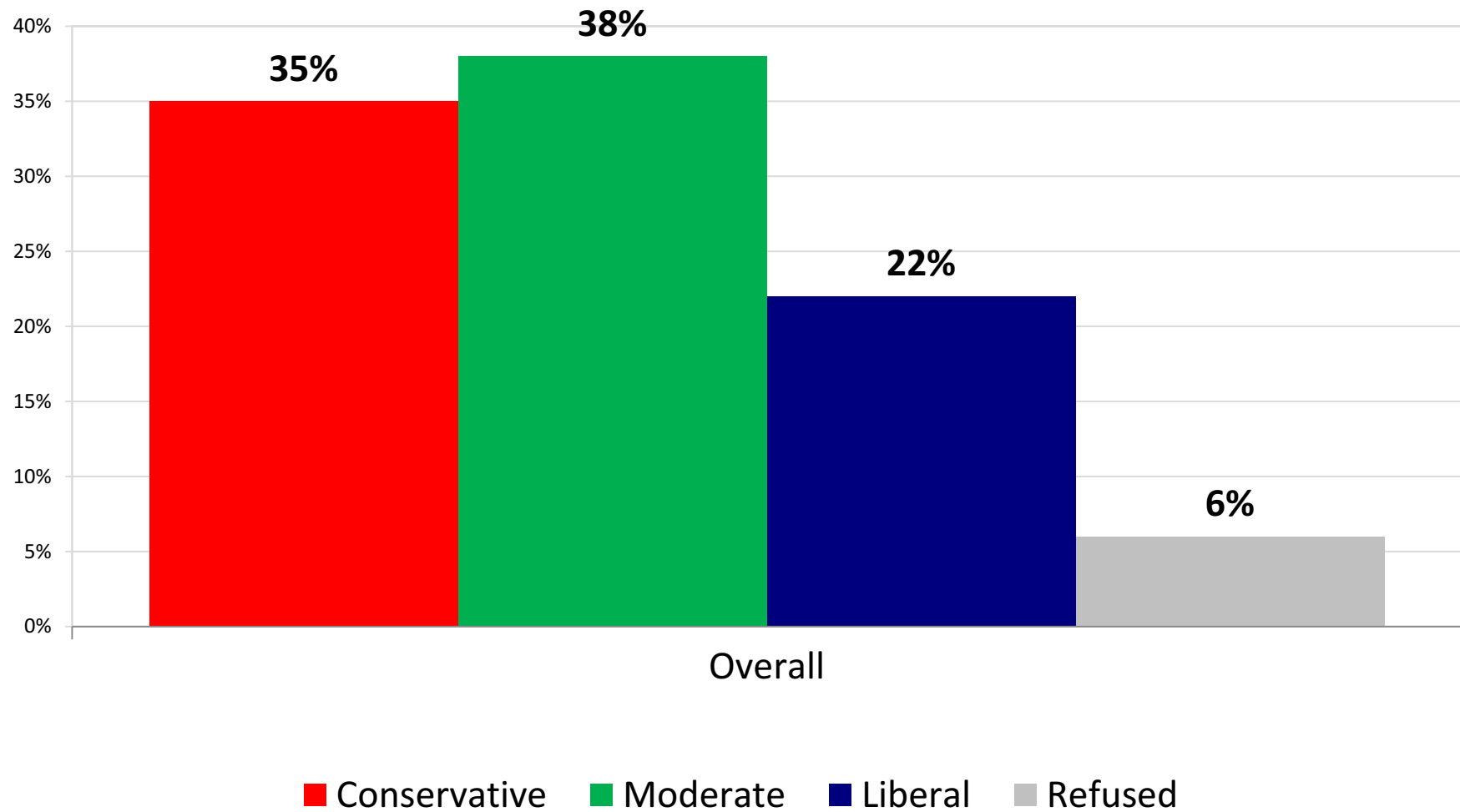
Political Party



■ Republican ■ Independent/Something Else ■ Democrat ■ Don't Know/Refused

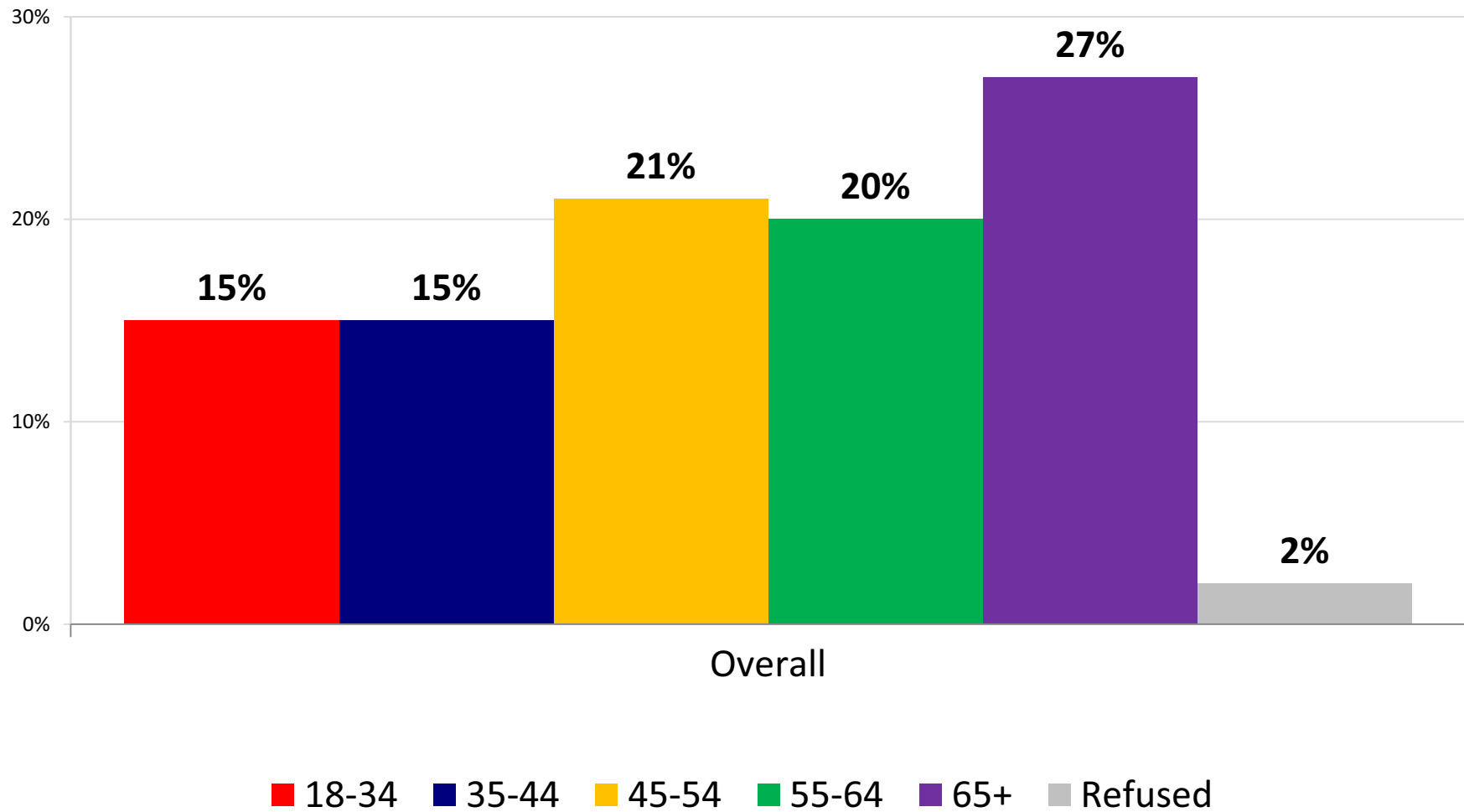
With which political party are you registered? Are you registered as a...

Ideology



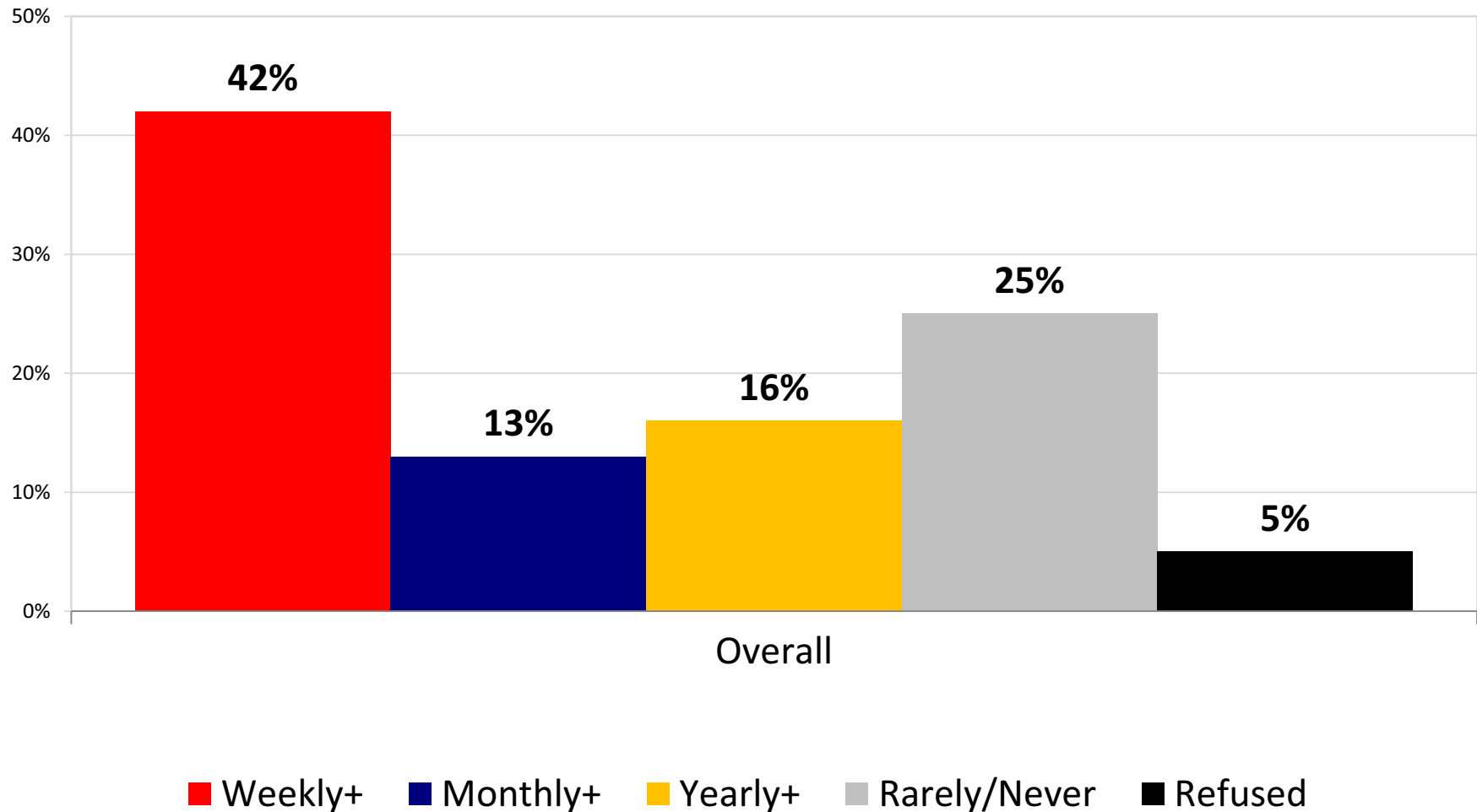
Would you consider yourself a liberal, moderate or conservative in your political beliefs?

Age



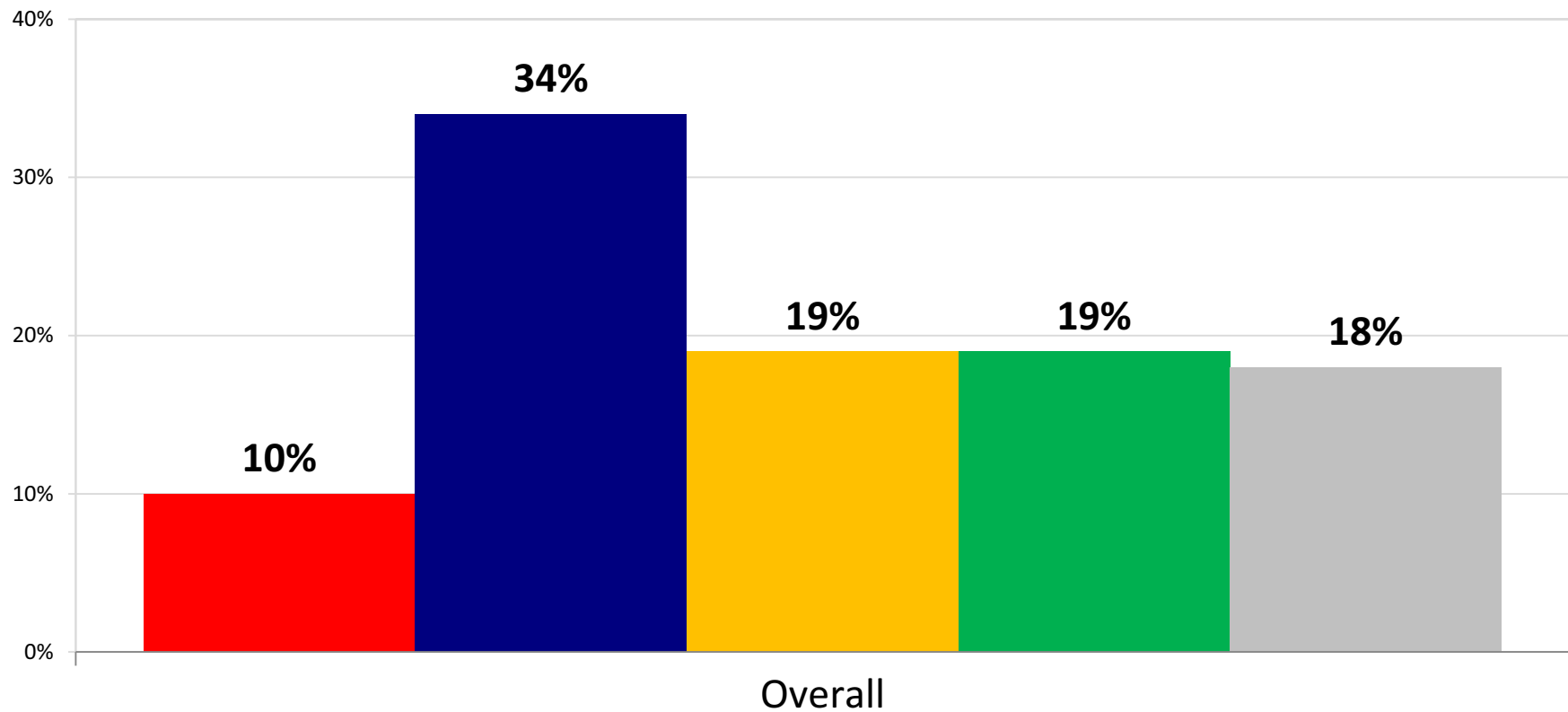
In what year were you born?

Religious Meetings



How often do you attend church and/or prayer meetings? Would you say you attend...

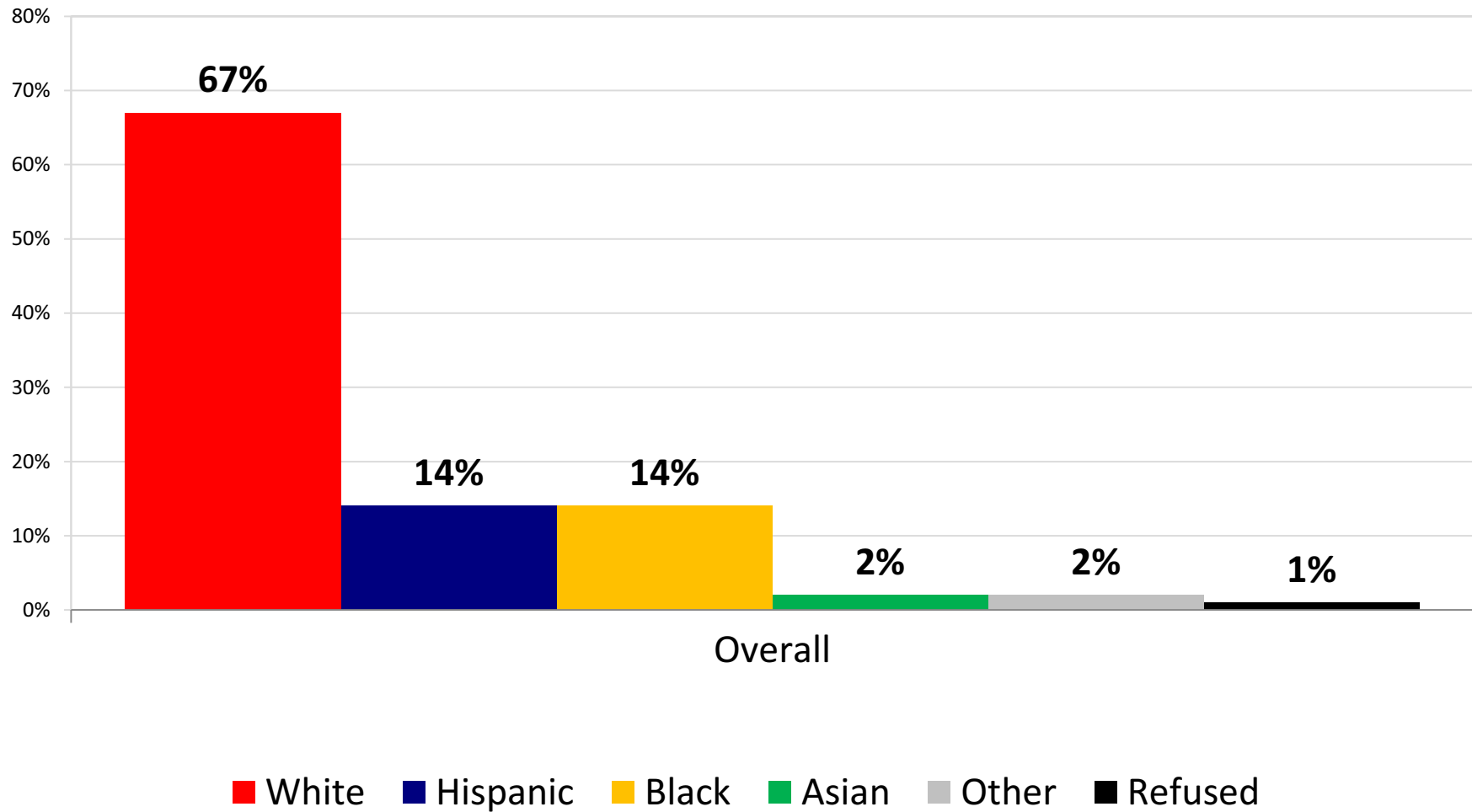
Income



■ < \$20K ■ \$20K - \$60K ■ \$60K - \$100K ■ > \$100K ■ Don't Know/Refused

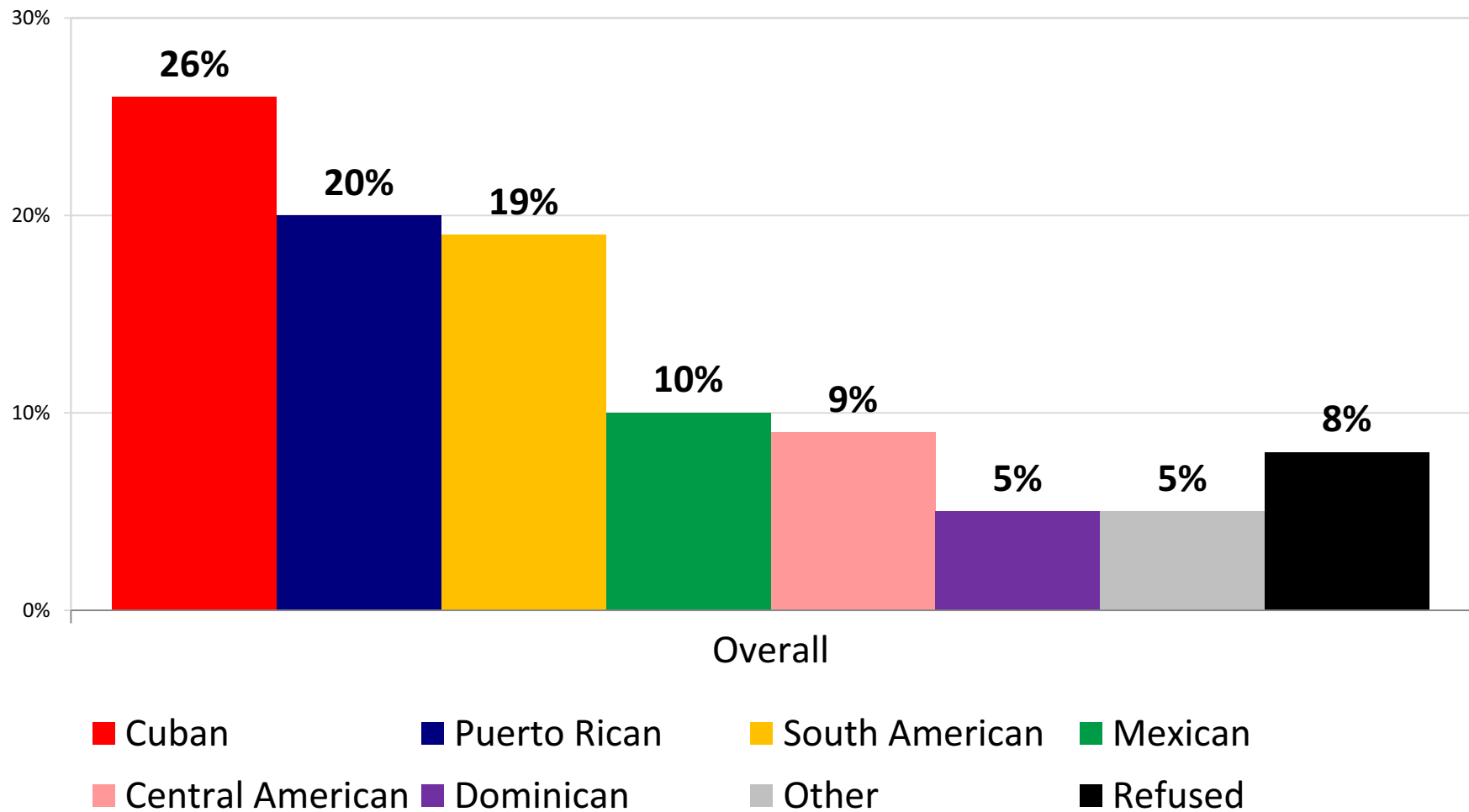
What is your annual household income BEFORE taxes? Is it...

Race/Ethnicity



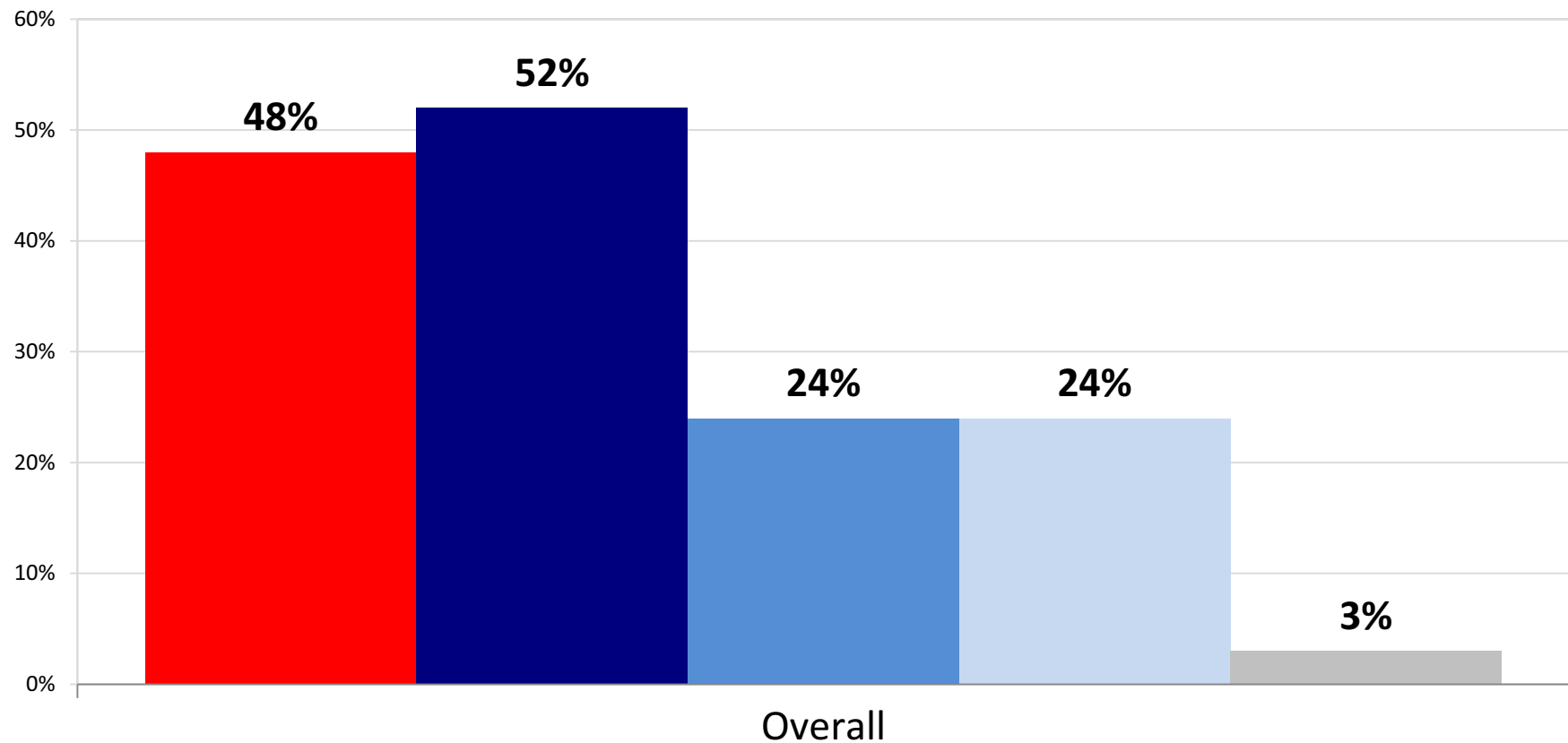
Are you or is a member of your immediate family from a Latino or Hispanic background? What is your main racial background?

Hispanic Ancestry ($n=112$)



Are you or is a member of your immediate family from a Latino or Hispanic background? What is your national ancestry?

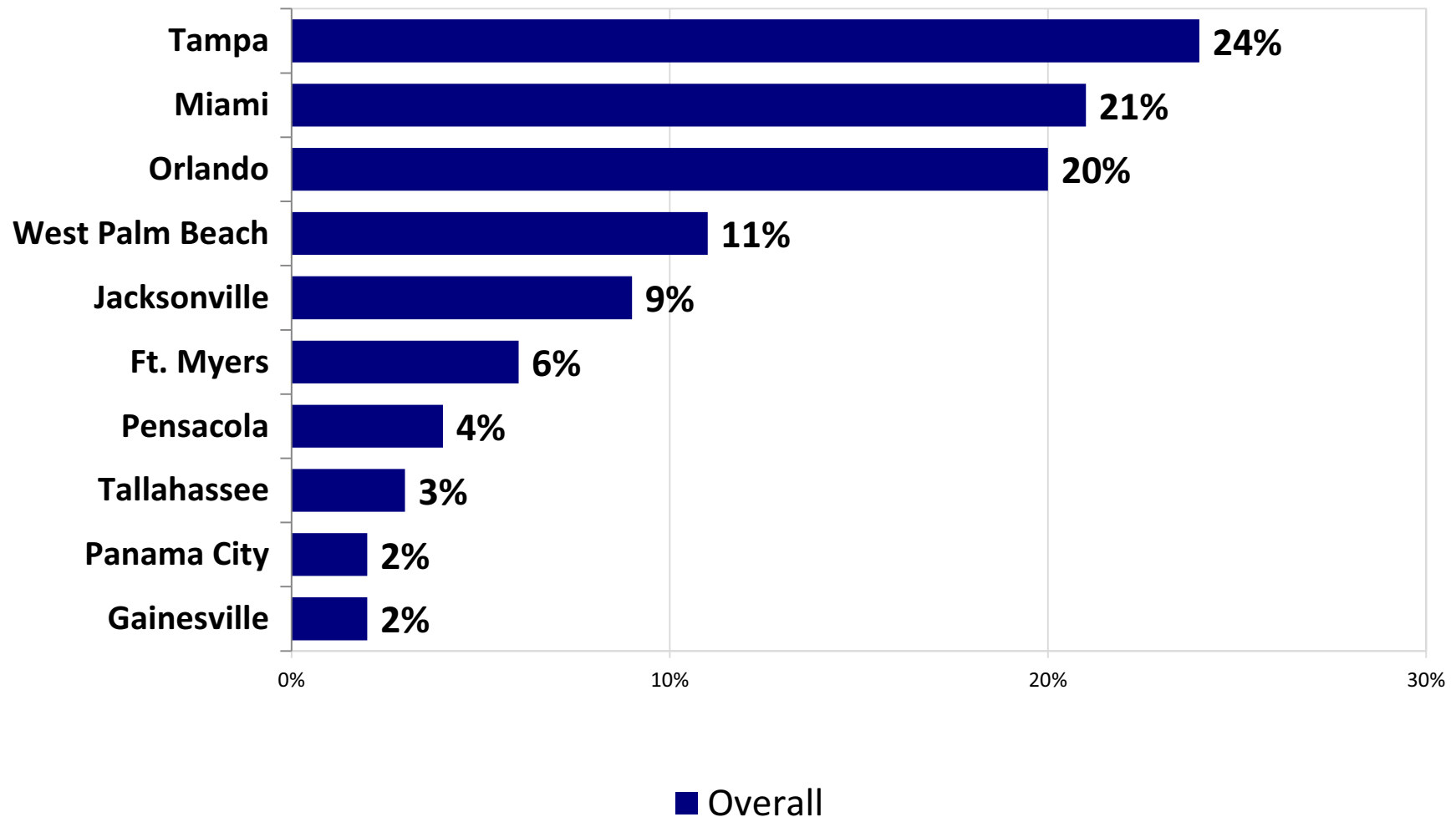
Gender



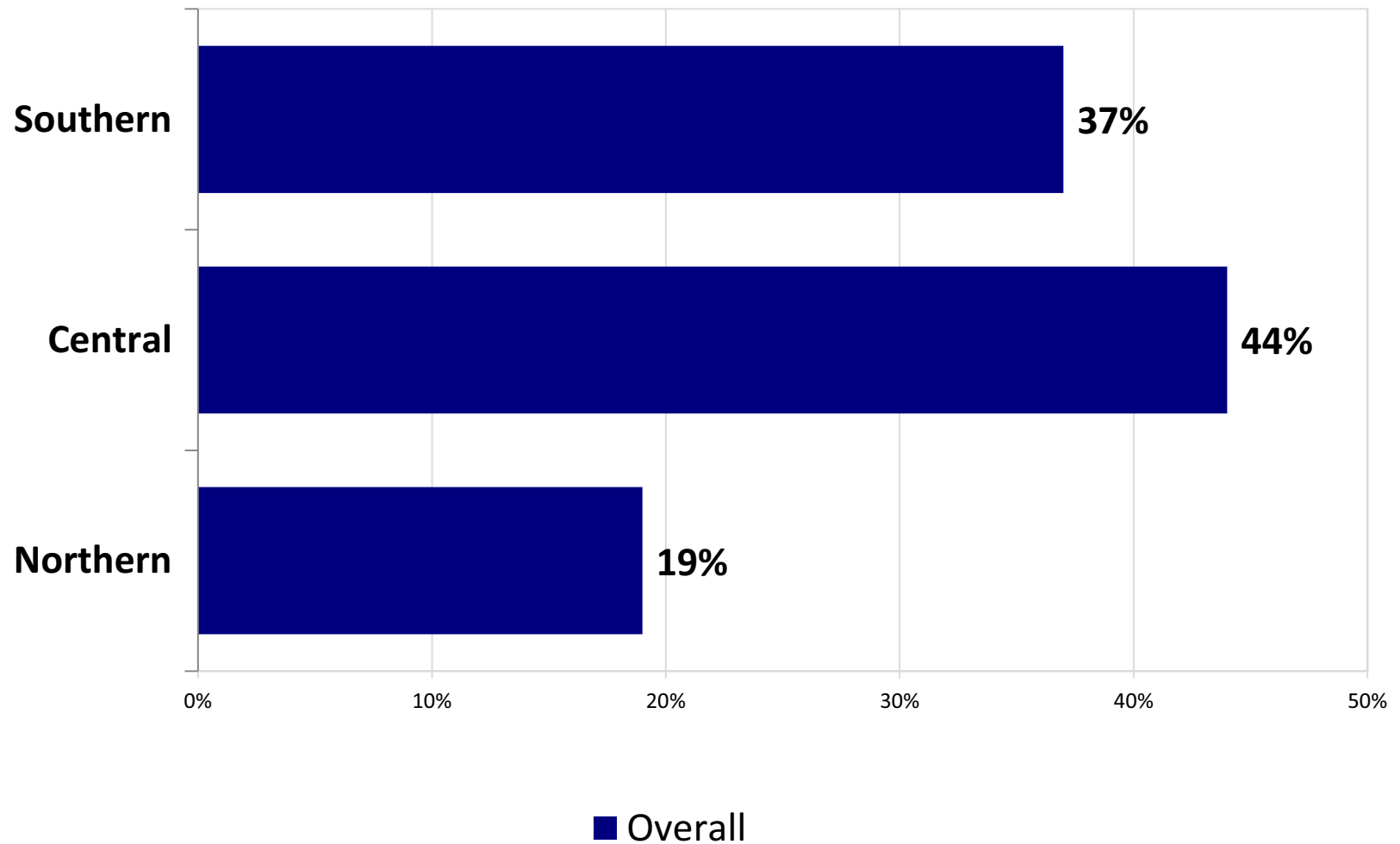
■ Male ■ Female ■ Female Working ■ Female Homemaker ■ Female Refused

Gender: (BY OBSERVATION) (IF Female) Are you employed outside the home?

Media Market



Region



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

15 Jan 13

Meeting Date

Topic Smart Justice

Bill Number Presentation
(if applicable)

Name Barney Bishop III

Amendment Barcode _____
(if applicable)

Job Title President & CEO

Address 204 South Monroe Street
Street Suite 201
Tallahassee, FL 32301
City State Zip

Phone 850 577-3025

E-mail barney@barneybishop.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-15-13

Meeting Date

Topic Smart Justice Presentation

Bill Number _____
(if applicable)

Name Marian Johnson

Amendment Barcode _____
(if applicable)

Job Title Ex Dir

Address 2731 Blairstone Rd #92
Street

Phone 850-521-1241

Tallahassee FL 32301
City State Zip

E-mail mjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Smart Justice

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/2013
Meeting Date

Topic Smart Justice Alliance

Bill Number _____
(if applicable)

Name Jim DeBeaugrie

Amendment Barcode _____
(if applicable)

Job Title CEO

Address 201 S. Monroe St., Ste. 301
Street
Tallahassee, FL 32317
City State Zip

Phone 850-513-0004

E-mail jim-debeaugrie@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

1-15-13

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic SMART JUSTICE PRESENTATION

Bill Number (if applicable)

Name Ron SILVER

Amendment Barcode (if applicable)

Job Title

Address 2031 NE 209 ST

Phone 305-502-1199

Street

Miami FL

City

State

Zip

E-mail RSILVER378@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing TEAMSTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic Smart Justice

Bill Number _____
(if applicable)

Name Doug Martin

Amendment Barcode _____
(if applicable)

Job Title Legislative Dir.

Address 3004 Highland Oaks Terr.

Phone 850-212-7447

Tallahassee FL 32301
City State Zip

E-mail dmartin@afscme-fl.org

Speaking: ☐ For ☐ Against ☒ Information

Representing AFSCME Florida Council 79

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SPB 7000

INTRODUCER: For consideration by Criminal Justice Committee

SUBJECT: OGSR/Certain Personal Identifying Information of Domestic & Sexual Violence Victims

DATE: January 9, 2013

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Cannon		Submitted as Committee Bill
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

This bill is the result of an Open Government Sunset Review performed by the Committee on Criminal Justice.

Current law¹ provides that certain personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee is confidential and exempt. Additionally, a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, including any agency time sheet that reflects such a request, is confidential and exempt from public record requirements until one year after the leave has been taken. This exemption is subject to review under the Open Government Sunset Review Act.² It will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature.

This bill reenacts the exemption.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 741.313(7) of the Florida Statutes.

¹ Section 741.313(7), F.S.

² Section 119.15, F.S.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.³ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.⁴ Article I, s. 24 of the State Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,⁵ which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁶ Section 119.07(1)(a), F.S., states:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁷

³ Section 1390, 1391 F.S. (Rev. 1892).

⁴ Article I, s. 24, Fla. Constitution.

⁵ Chapter 119, F.S.

⁶ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

⁷ Section 119.011(11), F.S.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁸ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁴ If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁶ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁷

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁹ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

¹⁰ Article I, s. 24(c), Fla. Constitution.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ Art. I, s. 24(c), Fla. Constitution.

¹⁴ Attorney General Opinion 85-62.

¹⁵ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(5)(a), F.S.

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁸

The Act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁹

Current Exemption Under Review

In 2007, the Legislature created a public record exemption for certain information documenting an act of domestic violence that is submitted to an agency by an agency employee.²⁰ In 2008, the Legislature extended the same protection to victims of sexual violence.²¹ Specifically, s. 741.313(7), F.S., protects from public disclosure personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee. In addition, a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, including any agency time sheet that reflects such a request, is confidential and exempt from public record requirements until one year after the leave has been taken.²²

Section 741.313, F.S., applies to public and private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.²³ An employee may take up to three days of leave in any 12 month period if the employee or family member is a victim of domestic or sexual violence. The leave may be with or without pay, at the discretion of the employer.²⁴ An employee may use the leave from work to do any of the following:

- Seek a protective injunction against domestic, sexual, dating, or repeat violence;

¹⁸ Section 119.15(4)(b), F.S.

¹⁹ Section 119.15(6)(a), F.S. These questions are as follows:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁰ Chapter 2007-108, s. 1, Laws of Fla.

²¹ Chapter 2008-254, s. 1, Laws of Fla.

²² *Id.* The public necessity statement in the original legislation creating the exemption states that the leave request is temporary and available one year after the leave has been taken so as to provide continued public oversight of public moneys.

²³ Section 741.313(3), F.S.

²⁴ Section 741.313(2)(a), F.S.

- Obtain medical care or mental health counseling related to the act of domestic or sexual violence;
- Obtain services from a victim services organization as a result of the act of domestic or sexual violence;
- Seek safe housing; or
- Seek legal assistance in addressing issues relating to the domestic or sexual violence, including attending or preparing for court proceedings.²⁵

An employee is required to provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family. Additionally, he or she must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.²⁶

This public record exemption stands repealed on October 2, 2013, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.²⁷

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption established in s. 741.313(7), F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue to protect personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee because disclosure would jeopardize their safety and cause emotional distress.²⁸

III. Effect of Proposed Changes:

This bill removes the repeal date in s. 741.313(7), F.S., thereby reenacting the public records exemption for certain personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee, including a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a request until one year after the leave has been taken.

²⁵ Section 741.313(2)(b), F.S.

²⁶ Section 741.313(4), F.S.

²⁷ Section 741.313(7)(c), F.S.

²⁸ According to a majority of survey responses (48 out of 65) from 23 state agencies and 41 city and county governmental entities, and input from the Florida Coalition Against Domestic Violence and the Florida Council Against Sexual Violence, this exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which could subject the employee to embarrassment, emotional distress, escalation of violence, and could deter the employee from seeking assistance from the agency or availing themselves of the benefits of the statute. Twenty-seven respondents recommended reenactment with no other changes. Eight respondents thought law enforcement should have access to the information. Nine respondents suggested reenactment as well as deleting the one-year time limitation. (*But see* note 22 *supra* indicating that the original public necessity statement regarding the time limitation was to provide continued public oversight of public moneys.) Three respondents recommended repealing the exemption, while 14 had no opinion either way. Survey respondents also indicated receiving ten leave requests since January 2008. The First Amendment Foundation stated that it would not oppose reenacting the exemption because the exemption is sufficiently narrow. Survey responses from this Open Government Sunset Review are on file with the Senate Criminal Justice Committee in Tallahassee, Florida.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

The bill reenacts and amends an existing public records exemption specified in s. 741.313(7), F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00256-13

20137000__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 741.313, F.S., which provides a public records exemption for certain records submitted to an agency by an employee who is a victim of domestic violence or sexual violence; eliminating the scheduled repeal of the exemption under the Open Government Sunset Review Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 741.313, Florida Statutes, is amended to read:

741.313 Unlawful action against employees seeking protection.—

(7) (a) Personal identifying information that is contained in records documenting an act of domestic violence or sexual violence and that is submitted to an agency, as defined in chapter 119, by an agency employee under the requirements of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A written request for leave that is submitted by an agency employee under the requirements of this section and any agency time sheet that reflects such a request are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until 1 year after the leave has been taken.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand~~

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-00256-13

20137000__

~~repealed on October 2, 2013, unless reviewed and saved from
repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



Department of Corrections

Transport of Inmates By Private Companies

Senate Criminal Justice Committee

January 15, 2013

Timothy H. Cannon
Assistant Secretary of Institutions



Inmate Transport

Transportation of state inmates can be separated into three primary categories:

- Transfer Between Facilities - DOC handles the extremely high volume of inmate transfers within the state prison system.
- Court Activity - Inmates are transported for court activity by the counties directly or through contracts they execute.
- Extradition / Interstate Transfers - DOC contracts with private transport companies for extradition of inmates when it is not cost effective for the Department to handle the transport due to the distance.



Extradition / Interstate Transport

The Department currently contracts with a private company as authorized in s. 944.597, F.S. for extradition / interstate transport of inmates from other states under the following circumstances:

- Inmates released under Florida Parole Commission who have violated their supervision in another state.
- Inmates being released from another jurisdiction to start serving a Florida sentence.
- Transfer of escapees and absconders.
- Transfers to accommodate Interstate Compact agreements.



Current Statute

- Section 944.597, F.S., provides the Department with authority to contract with private companies for the transportation of prisoners both within and beyond the limits of this state.
- Requires private transport companies personnel to meet the minimum standards for a correctional officer or law enforcement officer in the state where employed as well as Florida.



Proposed Statutory Change

- Amend s. 944.597(2)(b), F.S., to require private transport companies to comply with applicable federal standards for entities providing prisoner or detainee services (28 C.F.R. Part 97 Standards).
- Proposal would align Florida with current federal requirements as well as other states.

Department of Corrections



Questions

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15
Meeting Date

Tab 4

Topic Inmate TRANSPORT

Bill Number _____
(if applicable)

Name Tim Cannon

Amendment Barcode _____
(if applicable)

Job Title Asst. Sec / Institutions

Address 301 S. Calhoun

Phone _____

Tallahassee FL 32322
City State Zip

E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing DOE

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

CourtSmart Tag Report

Room: LL 37
Caption: Senate Criminal Justice

Case:
Judge:

Type:

Started: 1/15/2013 9:03:38 AM
Ends: 1/15/2013 11:29:02 AM **Length:** 02:25:25

9:03:46 AM Meeting Called to Order
9:04:38 AM Tab 1 - SB 92 (Searches and Seizures) Senator Negron
9:06:55 AM Senator Dean question
9:08:28 AM Senator Negron
9:09:04 AM Senator Simmons question
9:10:45 AM Senator Negron
9:11:20 AM 836310
9:13:53 AM 816222
9:14:02 AM 123408
9:15:27 AM Senator Bradley comment
9:17:34 AM Senator Negron
9:18:22 AM Senator Simmons comment
9:19:15 AM Senator Altman question
9:20:18 AM Senator Negron
9:21:24 AM Senator Dean comment
9:22:49 AM 123408
9:23:15 AM Robert Trammell - Florida Public Defenders Assoc. Waive in Support
9:23:24 AM Keri Rayborn Silver - Florida Sheriff's Association
9:24:06 AM Tim Stanfield - Florida Police Chiefs
9:24:42 AM Henry Kelley
9:26:07 AM Senator Negron to Close on SB 92
9:27:22 AM Roll call CS/SB 92
9:28:11 AM SPB 7000 OGSRA/Agency Employee/Victim of Domestic Violence or Sexual Violence
9:28:32 AM Donna Dugger (Criminal Justice Committee Staff)
9:30:52 AM Motion to submit 7000 as committee bill and roll call
9:31:24 AM Tim Cannon, Assistant Secretary/Institutions (Department of Corrections) Inmate Transportation
9:36:15 AM Senator Dean question and answers
9:36:51 AM
9:38:35 AM Senator Gibson comment
9:42:14 AM Tab 2 - Presentation by Florida Smart Justice Alliance on the 2012 Justice Summit
9:42:39 AM Barney Bishop - Pres. and CEO of Florida Smart Justice Alliance
9:52:21 AM Marian Johnson Executive Director of the Political Institute on Smart Justice Poll
10:05:46 AM Senator Simmons questions and answers
10:10:36 AM Senator Dean questions and answers
10:18:36 AM Jim DeBeaugrine on Florida Smart Justice Alliance
10:37:40 AM Senator Gibson questions and answers
10:48:34 AM Senator Bradley question and answer
10:50:10 AM Senator Dean question and answer
10:54:01 AM Senator Ron Silver representing Teamsters
11:01:13 AM Senator Simmons question
11:06:30 AM Senator Gibson question
11:08:53 AM Senator Simmons questions and answers
11:21:13 AM Doug Martin, AFSCME Florida Council 79
11:24:04 AM Senator Evers comments
11:28:55 AM Move to rise